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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 RAMI NAJM ASAD GHANEM,
aka "Rami Ghanem,"

16 Defendant.

No. CR 15-704-FLA

GOVERNMENT'S SENTENCING POSITION;
DECLARATION OF MELISSA MILLS;
EXHIBITS 2022-1 THROUGH 2022-14

Hearing Date: April 29, 2022

Hearing Time: 10:30 a.m.

Location: Courtroom of the
Hon. Fernando L.
Aenlle-Rocha

18
19 Plaintiff United States of America, by and through its counsel
20 of record, the United States Attorney for the Central District of
21 California and Assistant United States Attorney Melissa Mills, hereby
22 files its Sentencing Position.

23 This Sentencing Position is based upon the attached sentencing
24 memorandum; the supporting declaration of Melissa Mills and the
25 exhibits thereto; the government's prior sentencing memoranda and the
26 exhibits thereto; the government's trial exhibits, testimony, and
27 other evidence introduced at trial; the files and records in this
28 case; the Pre-Sentence Investigation Report; the U.S. Probation

1 Office's disclosed recommendation letter, and such further evidence
2 and argument as the Court may permit.

3 Dated: April 15, 2022

Respectfully submitted,

4 TRACY L. WILKISON
United States Attorney

5 SCOTT M. GARRINGER
6 Assistant United States Attorney
7 Chief, Criminal Division

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Defendant made his living as an arms dealer at the highest
4 levels of the international black market, trading in virtually every
5 conventional weapon of war used in armed conflict today, and
6 simultaneously dabbling in black-market uranium, a critical component
7 of nuclear and biological weapons. For years, defendant bought,
8 sold, and brokered the sale of millions of rounds of ammunition, each
9 of which had the potential and the purpose to end a human life. The
10 machine guns, assault rifles, rockets, mortars, rocket-propelled
11 grenades, and anti-tank weapons that were also his stock and trade
12 had virtually limitless potential to sow death and destruction both
13 on and off the battlefield, particularly when coupled with the
14 unending stream of ammunition that defendant marketed to feed those
15 weapons. Defendant offered his wares to customers located in many
16 war-torn corners of the world, and he had no qualms about selling
17 weapons to Hezbollah, a designated foreign terrorist organization.

18 Defendant was undoubtedly aware that the machinery of death in
19 which he trafficked had the power and the purpose to shatter (and may
20 indeed have shattered) countless lives, including civilian lives.
21 Indeed, defendant was cavalier about those lives and his role in
22 endangering them for his own financial benefit, and he coolly
23 admitted that he was wholly indifferent to the possibility that his
24 weapons and ammunition would be used against refugees and other
25 civilians. The night before his arrest, defendant confided to an
26 undercover agent that while he did not want to *knowingly* have a role
27 in killing refugees, if he sold weapons to Saudi Arabia that were
28 then used to kill, for instance, refugees in Yemen or Syria, "that's

1 their business." Exhibit 1104. Defendant's callous disregard for
2 human life in pursuit of riches is particularly aggravating.

3 In the course of his business buying, selling, and brokering
4 instruments of death all over the globe over the course of years,
5 defendant also conspired to use and to transfer anti-aircraft
6 missiles. Notably, the evidence at trial established that a
7 principal object of that conspiracy was accomplished: mercenary
8 missile operators stood guard with those anti-aircraft missiles at an
9 airport outside Misrata, Libya, incentivized by defendant's offer of
10 a \$50,000 bounty if they successfully shot down an airplane operated
11 by the democratically elected and internationally recognized
12 government of Libya. The presence of those missiles and their
13 operators in Libya imperiled not only those aircraft and pilots, but
14 the delicate balance of United States national security and foreign
15 policy in North Africa and the Middle East.

16 In addition to his conspiracy to use shoulder-fired anti-
17 aircraft missiles against Libyan government aircraft, defendant also
18 sought to enrich himself by selling many hundreds of anti-aircraft
19 missiles of all kinds to militant factions and governments around the
20 world. Defendant's proliferation of these weapons on the global
21 black market jeopardized civilians, U.S. military forces, allied
22 forces, civilian air traffic, U.S. diplomacy and foreign policy, and
23 other national security interests.

24 On the morning of his arrest, defendant described an enthusiasm
25 for war that doubtless was not shared by those bearing the bloody
26 brunt of his illegal weapons proliferation in war-torn corners of the
27 world. In the hours before he was arrested on the first four
28 charges, defendant had this to say:

1 I wake up every day in the morning. First two things I do
2 at the same time, coffee, the cigarette is ready. I go to
3 the TV and press on the news. I go on news. If there is
4 peace I go [defendant pantomimed going to sleep], if there
5 is war, I wake up. I'm happy. There is more business for
me. It doesn't matter where is the business, where is the
war. Even if it's in Haiti, I will fly there. I love war
because it's business, you know.

6 Exhibit 1105.

7 The Ninth Circuit's vacatur of one count of conviction for an
8 erroneous jury instruction on extraterritorial venue does not change
9 either defendant's conduct or the appropriate sentence. Indeed,
10 nothing has changed to warrant a sentence different from the one
11 imposed by the judge who presided over this case for three years,
12 including the presentation of evidence at trial; who carefully
13 reviewed all sentencing briefs, testimony, exhibits, and factors; and
14 who found that even the 25-year mandatory minimum sentence was
15 insufficient to account for the gravity of defendant's offense
16 conduct. The interests of justice compel the same sentence for the
17 same conduct by the same defendant, which was proven beyond a
18 reasonable doubt. Pursuant to USSG 1B1.3, which provides that
19 defendant must be held accountable for all his relevant criminal
20 conduct, and the 3553(a) sentencing factors, a sentence of 30 years
21 remains appropriate.

22 **II. PROCEDURAL HISTORY**

23 On December 22, 2015, defendant was charged in a four-count
24 indictment (the "original Indictment") with violations of 22 U.S.C.
25 § 2778 (Arms Export Control Act), 18 U.S.C. § 554 (Smuggling), and 18
26 U.S.C. § 1956(a)(2)(A) (Money Laundering), which arose from his
27 efforts to purchase arms illegally from a Homeland Security
28 Investigations ("HSI") undercover agent (the "UCA").

1 A superseding indictment (the "First Superseding Indictment" or
2 "FSI") filed on March 24, 2017, charged defendant with three
3 additional counts alleging violations of 18 U.S.C. § 371 (Conspiracy,
4 Count 1), 22 U.S.C. § 2778 (Arms Export Control Act, Count 2), and
5 18 U.S.C. § 2332g (Conspiracy to Use and to Transfer Missile Systems
6 Designed to Destroy Aircraft, Count 3) (referred to herein as "the
7 anti-aircraft missile count"). For reasons relating to extradition,
8 the three-count FSI did not incorporate the four counts from the
9 original indictment, and the two indictments were joined in
10 preparation for trial. CR 264.

11 The afternoon before trial, on October 29, 2018, without a plea
12 agreement, defendant entered pleas of guilty to the four-count
13 original indictment and Counts 1 and 2 of the FSI. Counts 1 and 2 of
14 the FSI alleged that, among other weapons, defendant conspired to
15 transfer Igla, Strela, and S-400 Triumph anti-aircraft missiles, and
16 to use Igla anti-aircraft missiles, as similarly alleged in the
17 vacated anti-aircraft missile count.¹

18 On October 30, 2018, trial commenced as to Count 3 of the FSI.
19 On November 15, 2018, the jury returned a verdict of guilty.
20 Immediately following the jury's verdict, Judge Otero commented that
21 the evidence of defendant's guilt on the anti-aircraft missile count
22 was "overwhelming." CR 387 at 13.

23
24
25 ¹ See FSI Count 1, Overt Acts 1, 2, 5, 8, 11-17, 23-26, 29, 31-
26 35, 39; see also FSI Count 2 (list of munitions that defendant
27 brokered included Igla 9K38 surface-to-air missile launchers, Igla
28 9K38 surface-to-air missiles, Strela surface-to-air missile
launchers, Strela surface-to-air missiles, operators for Igla
surface-to-air missiles launchers, technicians for Igla surface-to-
air missile launchers, and trainers for Igla surface-to-air missile
launchers).

1 In preparation for sentencing, the parties submitted extensive
2 briefing. In particular, in light of defendant's eve-of-trial pleas
3 of guilty to six of the seven indicted counts, the government
4 submitted its key trial exhibits on those six counts and summaries
5 thereof, in order to allow the Court to evaluate the nature and full
6 extent of defendant's conduct on the counts that were not litigated
7 at trial.² CR 431, 432.

8 On August 19, 2019, Judge Otero conducted a sentencing hearing.
9 The government called Dr. Robert Doherty, an expert with 30 years of
10 experience in anti-aircraft missiles, to provide testimony as to the
11 unique dangers that proliferation of this category of weapon presents
12 to civilian targets, commercial aircraft, and U.S. national security
13 and foreign policy interests.³

14 At sentencing, Judge Otero found that the 25-year mandatory
15 minimum applicable to the anti-aircraft missile count was
16 substantially inadequate to fairly account for defendant's egregious
17 offense conduct, his relevant conduct, and the § 3553(a) sentencing
18 factors. Accordingly, the Court imposed a sentence including a 30-
19 year term of imprisonment. The Court imposed the statutory maximum
20 as to the remaining counts of conviction, as follows:

21 Count 1 (AECA): 240 months
22 Count 2 (smuggling): 120 months
23 Count 3 (money laundering): 240 months
24 Count 4 (money laundering): 240 months
FSI Count 1 (conspiracy): 60 months

25 ² To aid the Court, and because the facts relating to
26 defendant's offense conduct and relevant conduct remain unchanged
27 from the time of the 2019 briefing, the government has incorporated
28 herein portions of the factual descriptions from its prior briefing.

³ Dr. Doherty also testified at trial. The Court permitted his
limited additional testimony at sentencing on certain discrete areas
that the government elected not to elicit before the jury due to Rule
403 concerns.

1 FSI Count 2 (AECA): 240 months

2 The Court further ordered that all sentences run concurrently with
3 the 360 months imposed on FSI Count 3, the anti-aircraft missile
4 charge. CR 448.

5 On appeal, the Ninth Circuit rejected most of defendant's claims
6 but ultimately vacated his conviction for conspiracy to use and to
7 transfer anti-aircraft missiles on the ground that the Court's jury
8 instruction on extraterritorial venue was erroneous. Jurisdiction
9 was returned to the district court for the purpose of resentencing on
10 the remaining six counts of conviction. In light of Judge Otero's
11 2020 retirement, the case was reassigned to this Court on July 7,
12 2021.

13 On December 13, 2021, the United States Probation Office
14 ("USPO") issued the presentence report ("PSR") and a disclosed
15 recommendation letter recommending that this Court impose a sentence
16 of 20 years' imprisonment. On January 10, 2022, defendant filed
17 objections to the PSR, as detailed below. The government concurs
18 with USPO's calculations as to the sentencing guidelines articulated
19 in the PSR and has no objections to the PSR. The sentencing hearing
20 is set for April 29, 2022.

21 **III. FACTUAL BACKGROUND**

22 **A. Defendant's Initial Contacts with HSI**

23 In May 2014, a Los Angeles supplier of military goods advised
24 HSI that defendant had contacted the supplier to solicit a business
25 relationship. HSI conducted background investigation on defendant
26 and subsequently learned that an existing HSI source of information
27 ("SOI") had worked with defendant in the security-procurement
28 business many years before. CR 406 at 10-11.

1 In June 2014, at HSI's direction, the SOI re-established contact
 2 with defendant via email and telephone. Id. at 11-13. Defendant
 3 replied to the SOI's email outreach the same day, launching without
 4 preamble into the following immediate request to buy "heavy arms"
 5 destined for Iraq:

6 **From:** Rami Ghanem <ramithe@gmail.com>
 7 **Sent:** Wednesday, June 18, 2014 3:29 AM
 8 **To:** @gmail.com>
 9 **Subject:** RE: Weapons and MunitionROM Worksheet.xlsx

- 10 1. AK 47 as many as you have
 11 2. All type of Sniper rifle as many as you have
 12 3. Machine Gun (7.62x54, 12.7mm, 14.5mm, 23mm) all types and as many as
 13 you have
 14 4. PKC as many as you have
 15 5. Mortar (60mm, 80mm & 120mm) mortar and missile as many as you have
 16 6. Anti-tank and anti-armored vehicles
 7. Armored vehicles
 8. Ammunitions for all type any QTY you have will buy

17 As soon as I arrive to Iraq they will require heavy arms for us to be prepared.
 18 Mills Declaration, Exhibit 2022-1.

19 In July 2014, at HSI's direction, the SOI introduced defendant
 20 by phone to the HSI UCA based in Los Angeles. During their initial
 21 phone conversation, which was recorded and played at trial, defendant
 22 said that he needed various weapons and other military equipment.
 23 Exhibit 1025. The UCA told defendant that he could help procure some
 24 of Ghanem's requested items, including sniper rifles and night-vision
 25 optics, but that the order would have to be "under the table." CR
 26 428 at 62. Defendant affirmed that he wanted to proceed with the
 27 transaction and that he understood the risks involved, noting that he
 28 was also a U.S. citizen and was therefore "in the same boat." Id.

1 Defendant also made clear to the UCA that he was in the market for
2 "massive" quantities of weapons, ammunition, and munitions, stating
3 that his clientele "don't buy by small quantities," and noting, by
4 way of example, that defendant was looking to purchase "100 million"
5 rounds of AK-47 ammunition. Exhibit 1025.

6 The UCA sent defendant pricing information for several military
7 items that defendant had requested in the phone call, including 200
8 US-made M-4 carbine assault rifles. Mills Decl., Exhibit 2022-2. In
9 a subsequent recorded phone conversation in August 2014, defendant
10 and the UCA planned an in-person meeting in Greece in September 2014
11 to discuss business operations, including the outstanding order for
12 M-4s as well as larger future orders. CR 428 at 65. During that
13 call, defendant said that he had a strong market with Shi'a groups in
14 Iran, Iraq, and Lebanon, and he again affirmed that he did not intend
15 to apply for an export license and that the transaction would be
16 "under the table." Id.

17 **B. First Meeting with the UCA**

18 On September 18, 2014, defendant met with the UCA and the SOI in
19 Athens, Greece. Ex. 1033. During this meeting, which was recorded,
20 defendant described his extensive global arms-trafficking network.
21 Defendant advised that his connections in Beirut, Lebanon, included
22 the head of in Hezbollah in Iraq (a group designated by the United
23 States as a foreign terrorist organization). Id. Defendant noted
24 that he also had a weapons market in Africa. Id.

25 Defendant stated, "The black market, I always done it with the
26 Eastern Bloc. Anything you need, let me know. I have a very good
27 relation, I have very good people I deal with, ex-generals, ex -
28 okay?" Id. Defendant further reaffirmed his understanding of U.S.

1 legal requirements for export licenses and end-user certificates
2 ("EUCs")⁴, noting that he needed to be careful because he is a U.S.
3 citizen. Id. Defendant explained that he made illicit transactions
4 appear to be legal by creating false paperwork to give the
5 transactions the veneer of legitimacy: "Everything we do is legal.
6 And we legalize it, it's always legal. Okay? So there is nothing
7 such a thing as shipping items without documents. You create the
8 documents." Id.

9 At this meeting, defendant said that he was looking for a
10 particular sniper rifle that could cover a distance of 4500-5000
11 meters. Id. He added that he was dealing with a small U.S. company,
12 and that he was communicating with a person there who was willing to
13 make as many of the rifles as defendant required. Id. Defendant
14 clarified that they were discussing 500 pieces, and that the rifles
15 would be custom made for him. Id. Defendant said that his contact
16 told him that "ITAR" was required and that the contact would not ship
17 the items illegally. Id. Defendant said that he would obtain cover
18 documentation for that arms shipment from an Iraqi official, because
19 this shipment was one area of business to cover "illegally." Id.

20 Defendant stated that he had requirements for goods – including
21 Bell helicopters and F-5 and F-14 military fighter jets – on behalf
22 of Iranian customers that he did not identify. Id. Defendant
23 provided the UCA with documents partially written in Farsi (the
24 official language of Iran) that addressed these requests. Id. At
25

26
27 ⁴ At trial, the government established that an EUC is an
28 official document used in international transfers, including those
involving defense articles and services, to certify that the buyer is
the final recipient of the materials, and is not planning on
transferring the materials to another party.

1 defendant's request, the parties agreed not to make future references
2 to Iran in their dealings, and to instead use the cover term
3 "Ireland" when discussing Iran. Id.

4 Defendant and the UCA also discussed at the meeting defendant's
5 payment plans for their transaction. Id. Defendant said that cash
6 would not work, so he planned to use a bank wire to pay. Id. He
7 further noted that it was his standard practice to use a "cover"
8 contract that would "change the items" detailed in the contract but
9 give the correct price.⁵ Id.

10 **C. Discussions after the First Meeting**

11 Shortly after the September 2014 meeting, defendant e-mailed the
12 UCA requesting an update on the status of the M-4 rifles that
13 defendant had requested; the UCA replied that the 500 M-4s would be
14 available for delivery within days after defendant secured funding.
15 Mills Decl., Exhibit 2022-3.

16 In January 2015, defendant called the UCA. In this recorded
17 phone call, which was played at trial, defendant expressed suspicions
18 about the UCA's potential affiliation with law enforcement and voiced
19 reservations about working with the UCA, saying that it was important
20 to know who he was dealing with, because "one mistake, and you lose
21 what you built all your life." Exhibit 1002. After his suspicions
22 were allayed, defendant said that he needed night-vision goggles for
23 "MI-24" (an attack helicopter manufactured in Russia), and the UCA
24 responded that he would look into whether he could acquire this item.

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26
27 ⁵ As detailed herein, the evidence established that defendant
28 frequently used cover terms such as "fruits," "vegetables,"
"generators," and industrial equipment to mask the true nature of the
illegal weapons and ammunition that he was brokering.

1 Id. On this phone call, defendant and the UCA also agreed to meet
2 again in person. Id.

3 **D. Second Meeting with the UCA**

4 In March 2015, defendant again met with the UCA and the SOI in
5 Athens, Greece, to discuss potential business. CR 404 at 11. On
6 March 10, 2015, defendant met with the UCA and the SOI and discussed
7 the UCA's ability to supply military goods, particularly night-vision
8 goggles and other military optics. Exhibit 1003. This meeting was
9 recorded. The following day, the UCA sent defendant an e-mail
10 confirming the UCA's ability to supply defendant with the requested
11 goods. Mills Decl., Exhibit 2022-4.

12 On March 11, 2015, defendant engaged in multiple meetings with
13 the UCA and the SOI to discuss volume and other sales and export
14 logistical details for the military optical equipment requested by
15 defendant. CR 404 at 15, 24. Defendant and the UCA agreed that the
16 equipment would be exported from the United States without a license.
17 Ex. 1004. The UCA showed defendant working models of night-vision
18 goggles requested by defendant. Id. After inspecting the models,
19 defendant made two speakerphone calls to clients whom defendant
20 believed would be interested in the equipment. Id. One of the
21 prospective buyers asked where defendant could deliver the night-
22 vision equipment, to which defendant gleefully replied that he could
23 deliver them to the buyer's "bedroom." Id. On March 12, 2015,
24 defendant called the UCA and told him that defendant had received
25 positive feedback on the military optical equipment from potential
26 buyers in Egypt, Ukraine, and Greece. Id.

1 **E. Defendant's Order with the UCA**

2 1. Negotiations and Order Placement

3 On March 31, 2015, defendant sent the UCA an e-mail entitled
4 "Urgent requirement," which requested specific quantities of the
5 military optical equipment discussed at the March 2015 meetings in
6 Athens and inquiring as to the fastest time for delivery. Mills
7 Decl., Exhibit 2022-5. After the UCA advised defendant of a timeline
8 to procure and ship the requested military optics, defendant sent
9 another e-mail asking the UCA to send an invoice. Id. Defendant
10 subsequently advised the UCA that defendant had become ill and needed
11 time to recover.

12 On May 12, 2015, defendant sent the UCA an e-mail containing an
13 attached screenshot of another e-mail entitled "URGENT REQUIREMENT OF
14 AMMO." Mills Decl., Exhibit 2022-6. That e-mail listed several
15 types of missiles, rockets, ammunition, and other munitions,
16 including "Hell Fire Missile," "2.75 rocket," "Tow Missile (A and
17 B)," and "hand grenades." Upon receiving this message, the UCA
18 called defendant. During the call, defendant referred to the e-mail
19 he had sent to the UCA that day, noting "the list I gave you, which
20 has that Hellfire, the whole list is very serious." Ex. 1006.
21 Defendant added that he was "already supplying the buyer." Id.
22 Defendant and the UCA also discussed pricing and logistics for the
23 military optical equipment that defendant had requested. Id.

24 On July 24, 2015, defendant sent the UCA a message requesting
25 Barrett M82A1 .50 caliber sniper rifles and Steyr HS .50 caliber
26 sniper rifles. Mills Decl., Exhibit 2022-7. On July 27, 2015,
27 defendant sent the UCA another message asking to expand his order to
28 include 100 US-made "pistols with silencer." Mills Decl., Exhibit

1 2022-8. Specifically, defendant asked, "Also can you provide me with
2 100 pistols with silencer any good US even Gl[o]ck." Id.

3 On August 5, 2015, in a recorded phone conversation, defendant
4 acknowledged asked the UCA to proceed with an order for 100 pistols.
5 Ex. 1007. In the same phone call, defendant also requested that the
6 UCA procure on his behalf "at least 10 or 20" .50-caliber sniper
7 rifles, as well as laser sights. Id. Defendant further requested
8 50,000 rounds of 9mm ammunition. During this conversation, defendant
9 repeatedly asserted that he needed the requested items "ASAP" and
10 "right away." Id.

11 Later that day, the UCA sent defendant an e-mail with pricing
12 information and financing terms for the 9mm pistols, barrels,
13 silencers, and ammunition that defendant had requested. Mills Decl.,
14 Exhibit 2022-9. On August 6, defendant called the UCA to discuss the
15 contemplated order. Ex. 1008. During the call, defendant requested
16 "more advanced" sniper rifles, ultimately requesting five each of
17 "basic," "medium," and "high-end" sniper rifles. Id. Defendant also
18 requested night vision scopes for the sniper rifles. Id. Defendant
19 further asked the UCA to falsely state on the export documents that
20 the shipment contained juice. Id. Defendant advised that he wanted
21 the shipment to be routed through Greece with an ultimate destination
22 of Libya. Id. Defendant said that the money for the shipment would
23 come from Jordan. Id. On August 7, 2015, in an e-mail to the UCA,
24 defendant provided the name and contact information for his consignee
25 in Libya. Mills Decl., Exhibit 2022-10.

26 On August 9, 2015, the UCA sent defendant an e-mail with a full
27 breakdown of defendant's requested items, including quantities and
28 pricing. Mills Decl., Exhibit 2022-11. Per defendant's request, the

1 various categories of military goods were coded as "juice." Id. The
2 grand total for defendant's order at that stage was \$408,000. Id.
3 On August 26, 2015, defendant replied to the UCA's e-mail indicating
4 reductions to the quantity of each of the requested items. Id. As
5 noted below, defendant later explained that this revised order was
6 intended as a small precursor order to test the UCA's capabilities.
7 The updated order, which defendant ultimately placed and the UCA
8 purported to ship, came to a total of \$220,050 and included .50-
9 caliber rifles, 9-millimeter pistols, suppressors, laser sights, .50-
10 caliber and 9-millimeter ammunition, and night vision optics. Mills
11 Decl., Exhibit 2022-12. The UCA advised that a 40% down payment of
12 \$88,020 was needed to place the order. Id.

13 Per defendant's request, the UCA called defendant that day to
14 discuss the order. CR 404 at 62. During this phone call, defendant
15 said that he was going to pay for the order from his own money
16 because he was unable to reach his prospective customer. Id.
17 Defendant further advised that after this delivery, a "much bigger
18 order" would come. Id. Defendant also requested that instead of
19 "juice," the weapons and other military items be invoiced as
20 industrial generators. Id. During the discussion of his intended
21 bank transfer, defendant alluded to the illicit nature of their
22 transaction, noting, "we are not dealing with each other as [weapons
23 manufacturer] Bushmaster and [the] Jordan Armed Forces." Id. On
24 August 26, 2015, after the phone call, the UCA sent defendant an e-
25 mail with an invoice detailing the sale of three types of US-origin
26 industrial generators for a total price of \$220,050. Mills Decl.,
27 Exhibit 2022-13. The invoice listed defendant's previously
28

1 identified consignee in Libya as the purchaser, and it included
2 routing information for the UCA's undercover bank account. Id.

3 2. Payments and Shipment

4 On September 2, 2015, defendant confirmed to the UCA that
5 defendant had wired \$90,000 to the UCA's bank as a down payment on
6 the order. Mills Decl., Exhibit 2022-14. The bank records for the
7 UCA's undercover account show that a bank wire deposit from
8 defendant's company, Gateway to MENA, in the amount of \$89,971 posted
9 on September 2, 2015.

10 On October 19, 2015, defendant spoke with the UCA in a recorded
11 telephone call. Defendant said that he would wire the second
12 installment of \$90,000 to the UCA that week. Ex. 1013. Pursuant to
13 the agreement between defendant and the UCA, that second payment
14 would trigger the UCA's obligation to ship defendant's order from the
15 Port of Los Angeles to Greece. On the same telephone call, defendant
16 committed to meet the UCA in Greece in late November or early
17 December when the shipment arrived, in order to inspect the shipment
18 before it was forwarded onward to Defendant's customer in Libya
19 pursuant to the purchase agreement. Id. The UCA warned defendant
20 that he would not ship the container to Libya until defendant had
21 personally inspected it, and defendant agreed that he would come to
22 Greece to meet the UCA and inspect the shipment after its arrival.
23 Id.

24 On October 22, 2015, a second installment of \$89,971 was wired
25 to the UCA's undercover bank account from defendant's company in
26 Jordan. In late October 2015, HSI arranged for a shipping container
27 ostensibly containing defendant's order to leave the Port of Los
28 Angeles on November 3, 2015.

F. Defendant's Arrest by the Hellenic National Police and the Seizure of His Digital Devices

On December 8, 2015, defendant and the UCA traveled to a warehouse near Athens, Greece, where the Hellenic National Police ("HNP") arrested defendant pursuant to a Mutual Legal Assistance Treaty request from U.S. officials. During defendant's arrest, and later at defendant's hotel room, the HNP seized from defendant 19 digital devices, which HSI obtained from HNP and searched pursuant to a U.S. warrant. On these devices, agents discovered further evidence of defendant's prolific global arms-trafficking business, including numerous communications reflecting defendant's efforts to buy and sell a wide array of heavy weapons.

G. Defendant's Prolific Unlawful Arms Trafficking Activities Unrelated to the Undercover Transaction

The heart of defendant's business was unquestionably focused on the global arms market, as reflected in defendant's below text reply to an inquiry from his co-conspirator, Sergiu Banari:

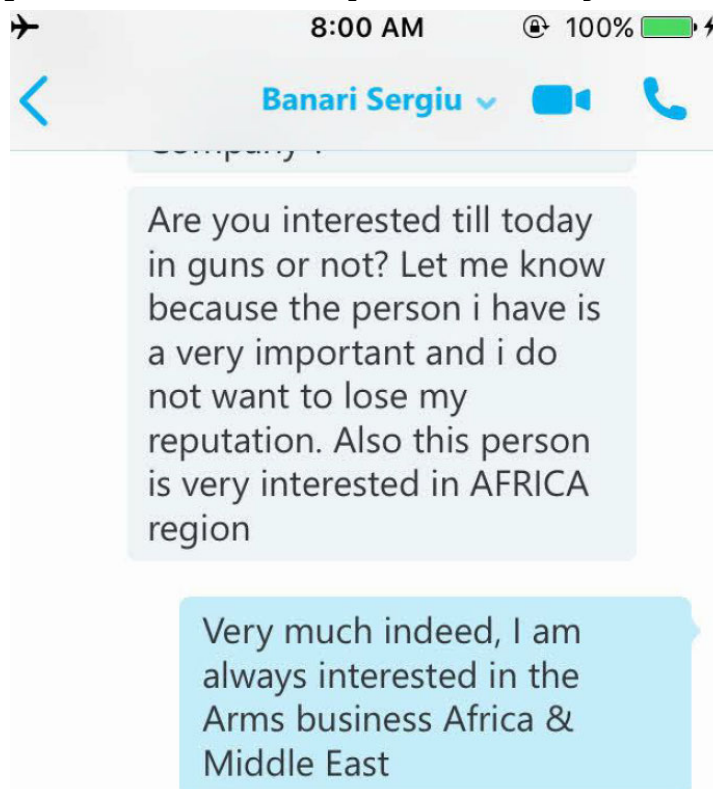


Exhibit 203. Similarly, defendant advised another prospective business partner that he was "only focused on the Armed business. . . Any other business [is] not in my books."

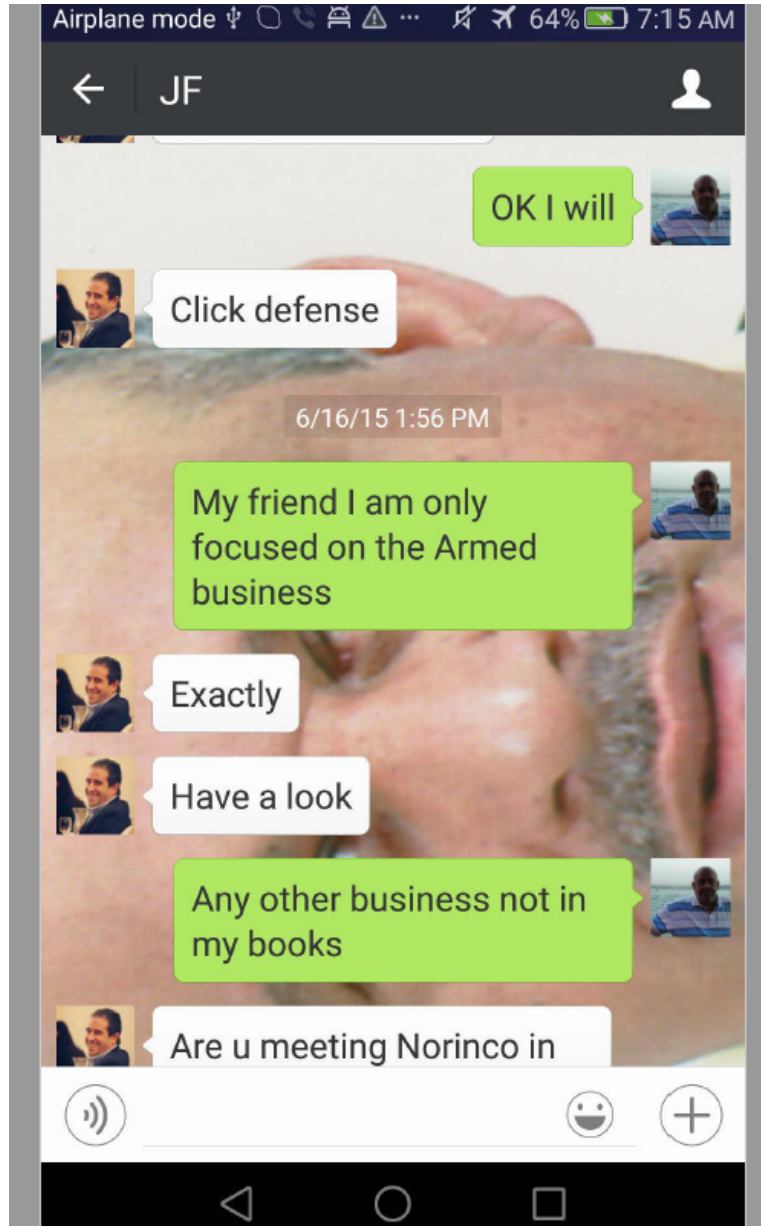


Exhibit 204.

Days before his arrest, defendant likewise admonished another correspondent, who had reached out with an offer to sell defendant the crown jewels of Ethiopia valued at \$120 million, "My business is

1 only related to Arms and security, please do not include me for any
2 business not related to that." Exhibit 205.

3 1. Negotiations, Offers, Contracts, and Other Documents
4 Offering a Snapshot of Defendant's High-Volume, High-
5 Dollar Illegal Arms Business

6 Defendant's communications and other records over the years
7 before his arrest offer a window into the vast dimensions of his
8 lucrative international arms-trafficking business. From the volumes
9 of defendant's negotiations, requests, quotations, offers, contracts,
10 invoices, and other documents reflecting his frenetic efforts to
11 profit from the brokering and sale of as many weapons and other
12 munitions as he possibly could, the government below details multiple
13 executed and/or completed deals, as well as several illustrative
14 examples of defendant's other efforts to close illegal arms deals
15 that may or may not have seen fruition.⁶
16
17

18 ⁶ This uncertainty as to whether or not particular transactions
19 were completed is because only a fraction of defendant's
20 communications and other business records were available to
21 investigators. Since the government's access was limited to certain
22 email or Skype communications that defendant chose to retain in his
23 email and/or on penetrable devices that he brought to Greece, the
24 investigation essentially cast a beam of light into the shadows of
25 defendant's illegal activity, with much of that activity still
26 obscured. Due to defendant's documented penchant for moving
27 sensitive communications to the many encrypted messaging applications
28 that he used, or to discussing such matters in telephonic or in-
person conversations, those gaps will remain. In addition, because
defendant and his co-conspirators relied on overseas banks and shell
companies, the only bank and corporate records available to U.S. law
enforcement were those attached to emails that defendant retained.

Nonetheless, given the longstanding relationships between
defendant and his repeat suppliers and buyers that endured across
multiple transactions, one may reasonably infer that defendant was
ultimately able to perform as he promised. Had he not done so, his
contacts in the ruthless and lawless world of black-market arms
trafficking would have — at a minimum — ceased dealing with him.

a. *Defendant's Negotiation and Execution of a Contract to Purchase a Quarter Billion Dollars in Arms and Ammunition*

Throughout the spring of 2015, defendant pursued massive quantities of arms and ammunition to sell to his customer in Libya for hundreds of millions of dollars. As detailed below, **these efforts ultimately led defendant to negotiate and sign a contract to illegally broker \$250,000,000 in munitions, including missiles, rockets, mortars, grenade launchers, sniper rifles, assault rifles, and ammunition, to a militant faction in Libya.**

Defendant was aware that his customer for this transaction, the Libya Dawn militant faction then based in Tripoli, was the subject of United Nations sanctions, a fact that caused him difficulty procuring a supplier that would sell to him with a Tripoli end-user certificate ("EUC"). As one prospective supplier told defendant, "we know current official Government of Libya is not any more in Tripoli!!!" Exhibit 502. In other related communications:

- Exhibit 508: Defendant stated: "can you supply Libya... Tripoli EUC." His prospective supplier replied: "Not sure if Libya EUC is even recognized."
- Exhibit 511: Defendant stated: "Ivan. . . was very clear that he can't supply to Libya."

Defendant thus began to explore ways to covertly mask the ultimate destination of this illegal shipment of arms and ammunition to the militant faction in Tripoli, specifically by purchasing an end-user certificate to falsely reflect the ultimate end user⁷, as demonstrated in the following exhibits:

⁷ At trial, the evidence showed that defendant routinely created or purchased fraudulent end-user certificates to facilitate his black-market arms deals. During a conversation wherein defendant

(footnote cont'd on next page)

- 1 • Exhibit 507: Defendant stated: "we are dealing with Tripoli
2 government and it's very hard now days due to the mix up
3 between the two sides of Libya. If you can find me a source
4 from one of those countries not so much attached to UN matter
5 such as Albania."
- 6 • Exhibit 508: Defendant proposed to a co-conspirator, who had
7 advised that the Libya end-user certificate would not be
8 recognized, "Maybe you can give me an offer for the items I
9 had sent by email using country Belize EUC and also to
10 support your work Tripoli EUC." The co-conspirator agreed
11 that they could try this scheme.
- 12 • Exhibit 535: Defendant contacted a prospective supplier and
13 advised, "we are looking for a good contact with Head of the
14 army or president in any African countries to help us in the
15 supply of ammunitions to help us [either] by selling us
16 directly from their old stock and they buy a new one or help
17 us in issuing an end user certificate and we will pay. . .
18 for the service."

19 As indicated in the following exhibits, defendant continued to
20 pursue a supplier for this large transaction, which defendant chose
21 to structure as a contract encompassing a small "trial" shipment
22 before the much larger full shipment would be made. At the
23 conclusion of negotiations with the selected supplier, Quisianto
24 Trading Limited, **defendant and the supplier ultimately signed a**
25 **contract to broker \$250,000,000 in arms and ammunition** to a militant
26 faction in Libya.

- 27 • Exhibit 516: Defendant's prospective supplier sent
28 defendant a draft contract including an annex described as
a "trial with small quantities." The "small quantities"
envisioned by this contract consisted of \$17,862,700 in
anti-tank missiles, rockets, mortars, and ammunition.
- Exhibit 517: Defendant forwarded the draft contract for
the \$17,862,700 small trial order to his customer in Libya

boasted about his control over the Eastern European "black market"
for munitions, defendant himself confirmed to the UCA that it was his
practice to create end-user certificates in order to "make it look
like it's legal." Exhibit 1033.

1 was the notation, "This is the correct agreement to be
2 signed."

- 3 • Exhibit 518: The end-user certificate from the Libya Dawn
4 militant faction for millions of rounds of ammunition, tens
5 of thousands of (each) mortars and rockets, thousands of
6 missiles, and other munitions listed the supplier as
7 "Gateway to MENA for Logistics Services, represented by Mr.
8 Rami Ghanem." The reference number on the end-user
9 certificate was 8628-57.
- 10 • Exhibit 519-522: Defendant and his customer exchanged
11 emails wherein the customer amended the quantities of
12 munitions listed in the end-user certificate.
- 13 • Exhibits 524-530: Defendant contacted several suppliers
14 with whom he had worked on other illegal arms deals to find
15 a supplier for the munitions required for this transaction.
- 16 • Exhibits 531-534: A co-conspirator, Tahsin Ammouri,
17 offered defendant some of the munitions he was seeking and
18 told defendant that he could send them to Libya. Defendant
19 expressed doubt that the Tripoli end-user certificate would
20 be accepted, but Ammouri assured him that it would.
21 Defendant proposed that a "trial order" include 23mm,
22 14.5mm, and 127mm ammunition. Defendant contacted his
23 Libyan client with information about the proposed deal.
- 24 • Exhibit 536-537: Defendant and Ammouri exchanged legal
25 documentation, including a power of attorney and an
26 amendment to the end-user certificate.
- 27 • Exhibit 540-541: Ammouri sent defendant an invoice for
28 \$249,591,800 as the purchase price of the contract; and an
annex reflecting a first delivery of ammunition for
\$26,808,960.
- Exhibit 542: Defendant's customer, the self-styled prime
minister of the Libya Dawn faction, sent defendant a new
end-user certificate for ammunition and rockets.
- Exhibit 543: Ammouri sent defendant a draft of the
contract for listed arms and ammunition at a total purchase
price of \$249,500,800; and an annex reflecting the "small
quantity of first trial shipment," for \$4,032,440. The
contract document and the annex reflected the invoice
number "8628-57," which is the reference number of
defendant's Libyan end-user certificate.

- 1 • Exhibit 544: Ammouri sent to defendant a modified version
2 of the contract reflecting, per defendant's request, a
3 small trial shipment of \$2,500,000 in ammunition.
- 4 • Exhibit 546: Ammouri sent defendant the "final contract"
5 containing all amendments as requested by defendant, and
6 requested that defendant provide his banking details.
- 7 • Exhibit 547: Defendant returned to Ammouri the final
8 contract for \$250,000,000 in arms and ammunition, with a
9 trial order for \$2,489,970 in ammunition. Defendant
10 initialed every page of the contract and signed and stamped
11 his business seal on the final page.
- 12 • Exhibit 549: Defendant provided his banking details to
13 Ammouri as required by the contract.
- 14 • Exhibit 550: Ammouri sent defendant the last page of the
15 signed and stamped quarter-billion contract No. 8628-57,
16 which contained signatures, business seals, and initials of
17 both defendant as the buyer of the arms and ammunition and
18 Alexei Kharlanov of Quisianto Trading Limited as the
19 seller.

b. *Defendant's Signed Contract to Broker Hundreds of
Rocket-Propelled Grenade Launchers and Related
Munitions to Egypt*

Through the fall of 2015, defendant facilitated the supply of
rocket-propelled grenades and launchers to the Egyptian Ministry of
Defense, as shown by the following exhibits. Defendant's
negotiations successfully culminated in a contract signed just days
before his arrest. The contract provided for the supplier, Care
Transenergy Ltd., to sell 500 RPG-7 rocket-propelled grenade (RPG)
launchers, 500 PGO-7V optical sights for RPG launchers, and related
munitions, for a purchase price of \$1,202,500.

- 25 • Exhibit 610: Defendant sent a signed and initialed
26 contract to his Egyptian business partner. The appendix
27 listed the above-specified munitions as subject of contract
28 and purchase price of \$1,202,500.
- Exhibit 611: Defendant and his supplier discussed sending
original contract by DHL.

1 As the broker for this contract, defendant was to receive a
2 commission of hundreds of thousands of dollars.

- 3 • Exhibit 600: The offer defendant received from his
4 supplier included a 20% commission for defendant's Egypt-
5 based company.
- 6 • Exhibit 604: Defendant explained to his supplier, "in your
7 offer you will add our commission," and sent him the
8 specific established procedures for how to do so.

9 This \$1,202,500 weapons contract may have been another example –
10 – like defendant's quarter-billion-dollar ammunition contract and his
11 relatively small order of munitions to test the undercover agent's
12 capabilities — of defendant's common practice of preceding massive
13 arms shipments with (relatively) smaller test orders. From the
14 initial order and continuing throughout the course of negotiations,
15 the customer's supply requirements specified the intended purchase of
16 a much higher volume of RPGs, launchers, and other munitions.

- 17 • Exhibit 600: Defendant's supplier's initial offer
18 responded to defendant's request for a proposal for 50,000
19 PG7V rocket-propelled grenade training projectiles, 28,000
20 live RPG projectiles, 1,100 RPG launcher sets, and 1350 RPG
21 optical sights, for a total of €21,335,500.
- 22 • Exhibit 604: In this message thread between defendant and
23 his supplier, defendant specified requirements for
24 munitions to include 50,000 training RPG projectiles,
25 20,000 live RPG projectiles, and tens of thousands of live
26 RPG heads and fuses.
- 27 • Exhibit 605: Defendant forwarded to his business partner
28 and co-conspirator the list of munitions referenced in
Exhibit 604 and specifications therefor.
- Exhibit 606: Defendant forwarded same list of munitions
and specifications to alternative prospective suppliers.
- Exhibit 608: Defendant's supplier confirmed the
availability of 50,000 live RPGs and 50,000 fuses. Earlier
in the thread, an email from defendant's business partner
specified the customer's initial request for 20,000 live

1 RPGs, 50,000 training RPGs, and 14,000 fuses, and noted
 2 that due to their contacts with the Egyptian military, no
 3 other supplier would be chosen if they made a competitive
 offer.

4 *c. Defendant's Shipment of Ammunition to Libya Using*
a Fraudulent Malawian End-User Certificate

5 In June and July of 2015, defendant and his co-conspirators
 6 prepared to, and did, ship over a million rounds of ammunition to
 7 Libya using a fraudulent end-user certificate. Defendant's co-
 8 conspirator explained that the planes would stop in Lilongwe, Malawi,
 9 allegedly for refueling, where the ammunition would be offloaded and
 10 shipped to Misrata, Libya, with the assistance of Malawian officials
 11 in exchange for a \$90,000 bribe. (Exhibit 565.) Defendant described
 12 this black-market method of delivery as the "black way." Exhibit
 13 559. The following exhibits reflect this shipment:

- 14 • Exhibits 555-567: This series of emails between defendant
 15 and his co-conspirator/business partner shows the final
 16 logistical arrangements for two "fruit planes," each
 17 bearing an illegal shipment of weapons and ammunition that
 18 defendant had brokered and sold to his customer in Libya.
 This transaction was accomplished using a fraudulent end-
 19 user certificate illegally purchased from Malawi for a 6.5%
 portion of the total transaction price, which reflected the
 following arms and munitions (Exhibit 557):

- 20 ○ 40,000 7.62 assault rifles
- 21 ○ 30,000,000 rounds of small-arms ammunition (12.7mm,
 22 7.62mm, and 14.5mm)
- 23 ○ 1,000,000 rounds of 23mm anti-aircraft ammunition
- 24 ○ 1,500 anti-tank grenade launchers
- 20,000 anti-tank grenades
- 1,500 7.62mm machine guns
- 39,000 mortar shells (60mm, 81mm, and 120mm)

25 Defendant's two "fruit planes" described in these communications
 26 delivered 247,820 rounds of 23mm and 14.5mm anti-aircraft ammunition,
 27 126,000 rounds of 12.7mm machine gun ammunition, and 1,355,200 rounds
 28

of 7.62mm assault rifle ammunition to feed Libya's civil war.
(Exhibit 566.)

d. *Representative Examples of Defendant's Other
Illegal Arms Transactions*

The following representative communications illustrate
additional efforts by defendant to broker hundreds of millions of
dollars in various munitions.

(A) Defendant's Brokering of Various Arms and
Ammunition to Libya

- Exhibit 510: Pursuant to defendant's request, an Israeli co-conspirator sent defendant pro forma invoices for large quantities of various missiles, rockets, mortars, grenade launchers, assault rifles, and ammunition totaling \$219,615,450.
- Exhibit 515: Defendant sent to a co-conspirator a contract for the purchase of a large volume of missiles, rockets, mortars, launchers, sniper rifles, and varying calibers of ammunition for \$338,183,200.
- Exhibit 502: Defendant negotiated his purchase of ammunition and various other munitions to sell to Libya. The seller's quotation included 160 T-72 battle tanks at a per-unit price of \$250,000.
- Exhibit 504: Defendant forwarded to his customer in the Libya Dawn militant faction specifications and photographs of various types of anti-aircraft ammunition.
- Exhibit 554: **On December 3, 2015 — five days before his arrest** — defendant engaged in negotiations with a co-conspirator to purchase \$800,000 in 23mm anti-aircraft ammunition to sell to his customer in the Libya Dawn militant faction. Defendant promised to be in touch from Athens, where he was ultimately arrested in this case on December 8, 2015.

(B) Defendant's Brokering of M240 Machine Guns
to Egyptian Military

- Exhibit 612: In an email thread between defendant and Israeli broker, they discussed defendant's request for 100

1 U.S.-made M240 machine guns to sell to Egypt. The broker
2 quoted a total price of \$1,227,000.

- 3 • Exhibit 613: Defendant advised the Israeli broker that he
4 can provide an end-user certificate, but that "if the
5 country of the seller are from west Europe... it will not
6 fly."
7
- 8 • Exhibit 614: Defendant received paperwork for the sale,
9 including a "Nontransfer and Use Certificate" from the U.S.
10 Department of State requiring certification that the
11 machine guns would not be retransferred.
- 12 • Exhibits 615, 616: These exhibits reflect Egypt's request
13 for defendant's proposal to sell M240 machine guns.

14 (C) Defendant's Brokering of 1,400,000 Rounds of
15 Assault-Rifle Ammunition to the Egyptian
16 Military

- 17 • Exhibits 617-625, 634-635, 637: In these communications,
18 defendant negotiated the supply of 1,400,000 rounds of
19 7.62x52mm linked machine gun cartridges to the Egyptian
20 army, with a 15% commission for defendant.
- 21 • Exhibits 627-633: Defendant's communications reflect his
22 negotiation of the supply of large quantities of various
23 arms and ammunition to the Egyptian military, including
24 anti-aircraft guns, mortars, rocket-propelled grenades,
25 machine guns, and assault rifles. After surveying his own
26 suppliers, defendant sent his customer a quotation
27 indicating he had procured 30,000 units of 122mm BM-21 Grad
28 multiple rocket launchers, offered at \$950/unit before
defendant's commission; and 10,000 7.62mm AKM assault
rifles, each offered at \$175 before defendant's commission.
(Exhibit 633)
- Exhibit 638: Defendant solicited an offer to supply 152mm
cannons, 23mm and 14.5mm anti-aircraft guns, and SPG-9
anti-tank cannons to a customer in Iraq.
- Exhibits 640-647: Defendant negotiated to supply various
arms to the Egyptian armed forces, including 900 machine
guns, 20,000 assault rifles, and 500 rocket launchers with
optics. Defendant noted to one prospective supplier that
this was a "small tender." (Exhibit 644)
- Exhibit 648: A week before his arrest, defendant detailed
his current orders, which included 10,000,000 rounds of

ammunition to South Africa, 100 SPG-9 anti-tank guns to Ethiopia, 4,000,000 rounds of automatic rifle ammunition to Iraq, and 4,000,000 rounds of pistol ammunition to Iraq.

e. Defendant's Offers and Negotiations to Buy and Sell Multi-Million Dollar Combat Aircraft

Among the defense articles that defendant sought to broker and sell to other countries and militant groups were combat jets and helicopter gunships, which regularly come equipped with heavy armaments. Included in the numerous documents reflecting defendant's negotiations and offers to buy and sell these combat aircraft are the following:

- Exhibit 704: Defendant advised a fellow broker that he was "very interested in the MI 24⁸ QTY 2 ready to go."
- Exhibit 707-708: Days later, another co-conspirator advised defendant of the availability of a "second MI-24" helicopter gunship for \$6,150,000. That day, defendant forwarded the specifications and photographs of the MI-24 to his customer in the Libya Dawn militant faction.
- Exhibit 710: Defendant contacted a fellow broker to request a quotation for two MI-24 helicopter gunships "ready to go for operation with full arms."
- Exhibit 714: Defendant's co-conspirator briefed him via email on the state of their "schedule[d] acquisition" of six MIG-29 fighter jets,⁹ for which defendant and his co-conspirator had already agreed to pay an "official end price" of between \$8,700,000 and \$9,100,000, with an "unofficial additional price" of \$6,000,000.
- Exhibit 736: Pursuant to his request for MI-24 combat helicopters and MiG-29 fighter jets, defendant received a quotation for five MI-24 at \$5,155,000 per helicopter.

⁸ The Mil Mi-24 is a large, Russian-built, helicopter gunship, attack helicopter and low-capacity troop transport.

⁹ The Mikoyan MiG-29 is a twin-engine jet fighter aircraft designed in the Soviet Union as an air superiority fighter during the 1970s, to counter new U.S. fighters such as the McDonnell Douglas F-15 Eagle and the General Dynamics F-16 Fighting Falcon.

1 Defendant replied to express interest, asking, "what type
2 of arms does it include?"

3 2. Financial Records Reflecting Some of the Profits
4 Defendant Gained From the Crimes of Conviction

5 The evidence gathered during the government's investigation of
6 defendant also includes invoices, bank transfers, and other financial
7 records documenting defendant's extensive brokering of defense
8 articles and services, including the services of mercenary fighters
9 to fight in foreign wars. Many of these records overtly confirm
10 defendant's payments for defense articles and services through 2014
11 and 2015, including the following:

- 12 • Exhibit 800: Invoices from defendant's company to his
13 customer in Libya reflect \$98,000 in helicopter armaments,
14 \$690,000 in salary and fees for L39 attack aircraft
15 operational crew, and \$1,800,000 in salary and fees for an
16 F-1 fighter jet¹⁰ operational crew.
- 17 • Exhibit 801: Invoices from defendant's company to his
18 customer in Libya reflect a total of \$3,685,740 in combat
19 aircraft tools and parts and mercenary services.
- 20 • Exhibit 802: Emails between defendant and his co-
21 conspirator included business report reflecting payments of
22 \$531,016 on the combat aircraft tools and parts and
23 mercenary services reflected in Exhibit 801.
- 24 • Exhibit 803: An email report from defendant's business
25 partner/co-conspirator to defendant reflects expenditures
26 totaling \$68,600 relating to pilots for MIG-25 fighter
27 jets.
- 28 • Exhibit 804: Defendant forwarded to his business partner
the \$68,600 accounting report in Exhibit 803, but defendant
tacked on an additional \$30,000 profit for himself.
Defendant also took the first business partner's \$9,000
estimate for the services of combat aircraft technicians
and inflated it by more than 50% before passing it along to
the second business partner. The second business partner
replied with a complaint that the resulting total of

¹⁰ The Dassault F1 is a French fighter and attack aircraft.

1 \$98,600, with additional services for \$15,000, was
2 "expensive."¹¹

- 3 • Exhibit 805: An email to defendant from his co-conspirator
4 accounted for many hundreds of thousands of dollars in
5 mercenary services provided, and monthly profit for
6 defendant on these transactions.
- 7 • Exhibit 806: Invoices to defendant's customer in Libya
8 reflect a total of \$1,106,000 in defense articles and
9 mercenary services.
- 10 • Exhibit 807: Invoices to defendant's customer in Libya
11 reflect a total of €346,000 in parts for F-1 fighter jets
12 and \$744,220 in mercenary services.
- 13 • Exhibit 808: Invoices to defendant's customer in Libya
14 reflect a total of \$633,000 in defense articles and
15 mercenary services.
- 16 • Exhibits 809-810: Emails to defendant from his co-
17 conspirator accounted for hundreds of thousands of dollars
18 in mercenary services provided and related expenses, and
19 monthly profits for defendant on these transactions.
- 20 • Exhibit 811: Invoices to defendant's customer in Libya
21 reflect a total of \$2,490,000 in mercenary services for F-1
22 and L39¹² combat aircrews.
- 23 • Exhibit 812: An email to defendant from his co-conspirator
24 accounted for mercenary services provided, and monthly
25 profits for defendant on these transactions.

26 Other financial records from defendant's communications do not
27 overtly indicate the purchase and sale of defense articles and
28 mercenary services, but rather purport to reflect innocuous
29 transactions for other goods and services. Defendant's standard
30 practice of using "cover" terms on invoices and other business

31 ¹¹ Defendant's willingness to siphon tens of thousands of dollars
32 from his closest business partners by adding upwards of 30-50% profit
33 for himself further illustrates his greed and his lack of regard even
34 for those inside his inner circle.

35 ¹² The Aero L-39 Albatross is a Czechoslovakian high-performance
36 jet trainer.

1 documentation was established at length at trial, as were his
2 repeated assertions describing his business as focused exclusively on
3 the transfer of arms and security services. Beyond the evidence
4 introduced at trial, additional evidence reflecting defendant's
5 regular and admitted use of cover documentation to conceal the
6 illicit nature of the weapons and mercenary services in which he
7 trafficked includes the following:

- 8 • Exhibit 813: An email from defendant to his business
9 partner attached two invoices to their customer in Libya.
10 Defendant described the attachments as follows: "one to
11 use as a cover for the money transfer and the 2nd one the
12 original invoice for the services." The "cover" invoice
13 purported to reflect the sale of 30 Toyota Hilux trucks
14 for a total of \$744,220. The real invoice reflected the
15 sale of mercenary air crew services and also totaled
16 \$744,220.
- 17 • Exhibits 814-815, 816 at red-tabbed page only:
18 Communications between defendant, his bank, and a co-
19 conspirator reflect defendant's receipt and laundering of
20 the \$744,220 referenced in Exhibit 813.
- 21 • Exhibit 817: This exhibit shows a new cover invoice to
22 defendant's customer in Libya for \$744,220 purporting to
23 reflect sale of 30 Toyota Hilux trucks, but in fact
24 reflected the sale of three more months of mercenary
25 services.
- 26 • Exhibits 819-820: These contemporaneous emails contain
27 two sets of invoices to defendant's customer. The first
28 set purports to reflect the sale of 43 Toyota Hilux
vehicles for a total of \$1,623,000. The second reflects
the true sale of \$1,623,000 in defense articles,
including a guided missile kit for a helicopter gunship,
and mercenary services, including a crew of anti-aircraft
missile operators.
- Exhibit 821: This invoice to defendant's company
purported to reflect the \$335,829 purchase of computer
equipment and related services, with a transmittal email
to defendant from his co-conspirator explaining that the
invoice in fact related to the mercenary services of a
MI-24 helicopter gunship crew.

- 1 • Exhibit 822: This invoice to defendant's company
2 purported to reflect \$66,099 and \$45,125 purchases of
3 "building construction materials," with a transmittal
4 email to defendant from his co-conspirator explaining
5 that the invoice in fact related to the mercenary
6 services of a MIG-23 fighter jet crew totaling \$111,224.
- 7 • Exhibit 823: This invoice to defendant's company
8 purported to reflect the \$326,800 purchase of "building
9 materials," with a transmittal email from his co-
10 conspirator explaining that the invoice in fact related
11 to the mercenary services of a MI-24 helicopter gunship
12 crew.
- 13 • Exhibits 824-826: This cover invoice from defendant's
14 company to a Libyan customer purported to reflect the
15 purchase of 27 GMC trucks for a total of \$875,363. Wire
16 transfer records over the subsequent two days reflect
17 payment from Libya Dawn militant faction to defendant's
18 company in the total amount of \$875,363.
- 19 • Exhibits 827-833: Communications over successive days
20 reflect various iterations of cover invoices to the Libya
21 Dawn faction for a total of \$972,630, and payment to
22 defendant's company in that amount. The cover
23 commodities referenced in this transaction range from GMC
24 and Toyota Hilux trucks to spare parts to generators to
25 building materials to construction materials and
26 scaffolding.
- 27 • Exhibits 834-835: Emails and a cover invoice from
28 defendant's company reflect the purported sale to the
29 Libya Dawn militant faction of \$500,000 in Toyota Hilux
30 trucks, and resulting payment by Libya Dawn in that
31 amount on that cover invoice.
- 32 • Exhibit 836: Three cover invoices from defendant's
33 company to the Libya Dawn militant faction reflect a
34 total amount owed of \$1,690,000, purportedly reflecting
35 the purchase of 50 Toyota Land Cruiser trucks.
- 36 • Exhibit 837: Cover invoices to defendant's company from
37 a co-conspirator shell company purportedly reflect the
38 purchase of "building materials and transport services"
39 in the amount of \$111,900. The transmittal email to
40 defendant from his co-conspirator explained that the
41 invoice in fact covered the salaries of mercenary crew
42 members of MI-24 helicopter gunships.

- 1 • Exhibit 838: A cover invoice to defendant's company from
2 a co-conspirator shell company purportedly reflected the
3 purchase of "building materials" in the amount of
4 \$25,000. By the transmittal email, defendant's co-
5 conspirator advised defendant that this invoice covered
6 expenses related to mercenary MI-24 crew members.
- 7 • Exhibit 840: Three cover invoices to defendant's company
8 purportedly reflected the purchase of construction
9 equipment in the total amount of \$249,159. The
10 transmittal email advised defendant that these invoices
11 covered MI-24 mercenary crew member salaries for two
12 months and related expenses.
- 13 • Exhibit 840: A cover invoice to defendant's company
14 purportedly reflected the purchase of building equipment
15 in the amount of \$93,500. The transmittal email to
16 defendant explained that the invoice actually covered
17 payment for the services of mercenary L39 crew members.
- 18 • Exhibit 841: A cover invoice to defendant's company
19 purportedly reflected \$33,467 due for the purchase of
20 construction materials. The transmittal email to
21 defendant stated that this invoice covered expenses
22 related to mercenary MI-24 crew members.
- 23 • Exhibit 842: Three cover invoices to defendant's company
24 purported to reflect the purchase of \$239,463 in building
25 equipment. In the transmittal email, defendant's co-
26 conspirator explained to defendant that the invoices
27 covered salary and expenses related to mercenary crew
28 members of L39 and MI-24 combat aircraft.
- Exhibits 843-844: Two cover invoices to defendant's
 company purportedly reflected the purchase of cement
 totaling \$240,800. The transmittal email advised
 defendant that these invoices covered salaries for L39
 and MI-24 combat air crews. A SWIFT bank record reflects
 payment to defendant's company on one of these invoices.

 Invoices and communications between defendant and his co-
conspirator show them obtaining prices for generators and related
non-military commodities and then making use of that pricing on cover
invoices for military equipment. Exhibits 846-862. Many of those
invoices and communications further clarify that the cover terms mask

the true nature of mercenary services. See, e.g., Exhibit 855, describing the cover invoice as for ("the new L39 salary for 5th month"); Exhibit 858 ("attached invoice for L39"), Exhibit 859 ("L39 Invoice"); Exhibit 861 ("Invoice Renault + L"); Exhibit 862 ("L39 + F")¹³; Exhibit 850 (referencing a team of F-1 pilots that defendant procured from Ecuador).

While the evidence — including defendant's own words — shows that he was driven by greed, defendant also apparently took a personal interest in the performance of some of the mercenaries whom he sent into combat. In one message exchange with an F-1 fighter pilot operating in Libya, defendant requested information about a particular air attack, and the pilot replied with a report that the "main target [was] destroyed in Sirte" with a single bomb and gunfire. Defendant praised the pilot's successful offensive operation and gave him a "thumbs up" emoji. (Exhibit 735)

On the basis of the evidence described herein, Counts One and Two of the FSI charged defendant with conspiracy to violate the Arms Export Control Act and unlawful brokering of weapons. In pleading guilty to those counts, defendant admitted to brokering and conspiring to transfer the following items:

Commodity
12.7-millimeter NSVT machine guns
7.62-millimeter AKS assault rifles
7.62-millimeter AKM assault rifles
7.62-millimeter PKM medium machine guns
7.62-millimeter SVD sniper rifles
Sniper rifles
CZ-999 pistols 9-millimeter pistols

¹³ Defendant's communications reveal that he brokered the mercenary services of combat pilots and crew members for the F-1 fighter jet.

Commodity
Glock 9-millimeter pistols
AK-47 assault rifles
Dragonov sniper rifles
14.5-millimeter KPVT machine guns
60-millimeter mortar shells
81-millimeter mortar shells
120-millimeter mortar shells
7.62 x 39-millimeter ammunition
Ammunition
23-millimeter ammunition
Zsu-23-2 23-millimeter ammunition
5.56 x 45-millimeter ammunition
BS-41 14.5-millimeter ammunition
9 x 19-millimeter ammunition
Zsu-57-2 57-millimeter anti-aircraft ammunition
M51 37-millimeter anti-aircraft armor-piercing capped trace
7.62 x 39-millimeter ammunition
7.62 x 54-millimeter ammunition
7.62 x 54-millimeter BKC ammunition
12.7 x 108-millimeter ammunition
Dishka 127 x 108-millimeter ammunition
14.5 x 114-millimeter ammunition
23 x 152-millimeter ammunition
D20 152-millimeter tank rounds
M48 76-millimeter tank rounds
D30 122-millimeter towed howitzer heat tank rounds
12.7 x 108-millimeter ammunition
RPG-7 anti-tank rocket-propelled grenade launcher
Kornet anti-tank guided missile launchers
Kornet anti-tank guided missiles
Igla 9K38 surface-to-air missile launchers
Igla 9K38 surface-to-air missiles
MI-24 rocket launchers
57-millimeter rockets
80-millimeter rockets
122-millimeter S-13T rockets
122-millimeter S-13 OF rockets
130-millimeter rockets
240-millimeter rockets
GRAD 122-millimeter rockets

Commodity
122-millimeter GRAD rocket launcher
107-millimeter GRAD rocket launcher
RPG-7 HEAT rounds
AT-2 Swatter guided missiles
AT-6 Spiral missiles
Konkurs anti-tank missile launchers
Konkurs anti-tank missiles
AGS-17 30-millimeter grenade launchers
Anti-tank grenade launchers RPG-7
Anti-tank grenades PG-7V
Fagot 9K111 anti-tank guided missile launchers
Fagot 9M111 anti-tank guided missiles
M70 Osa 90-millimeter anti-tank guided missile launchers
M79 Osa 90-millimeter anti-tank guided missile launchers
9M133 Kornet (Konkurs) anti-tank guided missile launchers including tripods and thermal sights
9M133 Kornet (Konkurs) anti-tank guided missiles
85-millimeter RPG-7 anti-tank launcher including telescopic sight
PG-7VL 85-millimeter HEAT projectiles
SKIF anti-tank guided missile launchers
SKIF anti-tank guided missiles
Strela surface-to-air missile launchers
Strela surface-to-air missiles
M79 Osa RBR 90-millimeter anti-tank guided rocket launchers
M79 Osa RBR 90-millimeter anti-tank guided rockets
M79 Osa RBR 90-millimeter anti-tank guided rocket tubes
9M151 Metis-M anti-tank guided missile launchers
9M131 Metis-M anti-tank guided missiles
Metis-M tripod launchers
Konkurs tripod launchers
9P163-1 Kornet tripod launchers
PG-7VLT tandem-charge anti-tank warheads
PG-7VR 85-millimeter HEAT tandem projectiles
Shershen-D anti-tank guided missile launchers
Shershen-D anti-tank guided missiles
Spare parts for T-72 battle tanks
Spare parts for BTR-80 amphibious armored personnel carriers
MI-24 attack helicopters
MIG-29 fighter jets
Operators for Igla surface-to-air missile launchers

Commodity
Technicians for Igla surface-to-air missile launchers
Trainers for Igla surface-to-air missile launchers
Special forces fighters
MI-24 attack helicopter pilots
L39 attack aircraft pilots
F-1 fighter jet pilots
MIG-25 fighter pilots
PVS-27 night-vision weapon sight
MI-24 night-vision equipment
Shershen-D thermal sights
Shershen-D PN-S combat module guidance devices
1PBN86-VI Metis-M thermal sights
Konkurs thermal sights
1PN79-1 Kornet thermal sights

H. Defendant's Conspiracy to Use and to Transfer Anti-Aircraft Missiles

Searches of defendant's digital devices and email account yielded copious evidence that, between 2013 and his arrest in December 2015, defendant conspired to transfer and to use anti-aircraft missiles. Based on that evidence, Count Three of the FSI charged defendant with violating 18 U.S.C. § 2332g. While that count was vacated on the ground of an erroneous jury instruction on venue, the evidence supporting it, which informed the jury's verdict of guilt beyond a reasonable doubt, constitutes relevant conduct for this Court to consider in sentencing. See U.S.S.G. § 1B1.3; see also United States v. Ghanem, 993 F.3d 1113, 1129 (9th Cir. 2021) (explaining that its decision to vacate the anti-aircraft missile count on venue jury instruction grounds turned on the substantial connection between the anti-aircraft missile conduct and the conduct alleged in the counts to which defendant pleaded guilty).

1 1. Conspiracy to Use Anti-Aircraft Missiles

2 The evidence at trial showed that defendant engaged in and
3 profited from multiple transactions whereby he provided mercenary
4 anti-aircraft missile specialists to shoot down airplanes over Libya.
5 That evidence included many of defendant's own communications on
6 those transactions, and those documents were corroborated by the
7 testimony of three co-conspirators involved in one such transaction.
8 Specifically, the jury heard at trial the testimony of Zurab
9 Partsakhashvili and Gia Devidze, two Georgian operators of Igla anti-
10 aircraft missiles, whose mercenary services defendant procured and
11 then brokered to a rebel faction in Libya.¹⁴ The jury also heard the
12 testimony of Sandro Kavsadze, a Georgian arms broker who operated as
13 a middleman and escorted the Igla operators to their duty station in
14 Libya, and to whom defendant conveyed an offer of a \$50,000 bonus to
15 any operator who succeeded in shooting down an airplane in Libya.

16 The evidence at trial extensively detailed this completed
17 transaction. In early 2015, defendant negotiated with another co-
18 conspirator from the Republic of Georgia, David Shikhashvili, to
19 purchase — among other defense articles and services — the services
20 of the two mercenaries to fire Igla anti-aircraft missiles and one or
21 more mercenaries to fire Quadrant anti-aircraft missiles, for a total
22 of \$398,000.¹⁵ Exhibits 400, 401, 403-406. Exhibit 5400 included the
23 following photographs of Quadrant and Igla anti-aircraft missile
24 systems:

25 _____
26 ¹⁴ The sworn testimony of Partsakhashvili, Devidze, and Kavsadze
27 was taken and preserved overseas, offered at trial, and admitted
pursuant to Rule 15 of the Federal Rules of Criminal Procedure.

28 ¹⁵ As established at trial, the Igla system is a man-portable
shoulder-fired anti-aircraft missile system. The Quadrant system is a
mobile anti-aircraft missile system.

2K12 "Kub" / 2K12E "Kvadrat" ("Cub" / "Quadrat")



Exhibit 5400 at 14.

Igla-S MANPADS and 9M342 Missile



Exhibit 5400 at 7-8.

1 The evidence further showed that on February 10, 2015,
2 defendant's business partner, Mohamed Aldaboubi, paid the \$398,000
3 invoice for these munitions and mercenary services to operate the
4 Igla and Quadrant anti-aircraft missiles, and that defendant forwarded
5 the record of the Swift wire transfer to Shikhashvili that same day.
6 Exhibits 407-408. After payment, defendant and Shikhashvili
7 continued to negotiate the exact terms of the deal, and Shikhashvili
8 advised defendant of his trouble in obtaining the anti-aircraft
9 missile mercenaries. Exhibits 409-12. For example, on February 17,
10 2015, Shikhashvili told defendant, "Copy of the passports for
11 quadrant and igla can not be given now because several persons just
12 refused because of war situation there." Exhibit 410. Defendant
13 continued to press Shikhashvili to promptly provide the Igla and
14 Quadrant operators and other defense services and equipment,
15 threatening that if Shikhashvili did not come through soon, defendant
16 would cancel his order and "go back to my other supplier," and to get
17 the goods and services through "my other sources." Exhibits 410, 412.

18 On March 9, 2015, defendant sent a Skype message to Kavzadze,
19 who was acting as a middleman between defendant and Shikhashvili,
20 advising that he needed three Quadrant surface-to-air missile
21 specialists and two Igla operators/trainers. As an incentive to the
22 Igla operators, defendant offered that any mercenary who successfully
23 shot down a Libyan aircraft would be given a \$50,000 bonus and
24 permitted to go home immediately. Exhibits 413, 424. Once the Igla
25 operators were identified, defendant sent their passports to his
26 Libyan militia client; arranged for their visas and transportation to
27 Misurata, Libya, along with Kavzadze as an escort; and met with
28 Kavzadze in Istanbul while en route with the mercenaries to their

1 duty station. Exhibits 420, 439-445.

2 The Igla operators, who were desperate enough to risk their
3 lives fighting in a bloody civil war on another continent, received a
4 relative pittance for their services, while defendant pocketed
5 several times what he paid another broker for those services.

6 Compare Exhibit 426 (defendant allocated a \$50,000 total payment to
7 his broker — who presumably took his own sizeable cut — for three
8 Quadrat surface-to-air missile specialists for Libya), with Exhibits
9 819-820 (defendant charged his Libyan customer \$185,000 for services
10 of that same Quadrat surface-to-air missile crew). One of the Igla
11 missile operators whose recorded testimony was shown at trial,
12 Partsakhashvili, testified that he needed the money from this
13 mercenary job to pay for his child's cancer surgery. Exhibit 1015,
14 transcript at 32. Another missile operator, Devidze, testified that
15 he needed the money to address his family's desperate financial
16 situation. Exhibit 1016, transcript at 55-56, 66. Both missile
17 operators testified that they ultimately received only a small
18 portion of the fees they were promised — which was itself a meager
19 fraction of the money that defendant and his fellow brokers pocketed
20 from the missile operators' risk and labor. See also Exhibits 819-
21 20; Exhibit 422 (as defendant and his co-conspirator discussed the
22 allocation of defendant's funds and where to find an additional
23 \$9,000, the co-conspirator advised that they could "deduct" it from
24 the money paid to the missile operator).¹⁶

25
26 ¹⁶ Examples of defendant's underhanded, deceitful, and in some
27 cases exploitative business practices abound. As another
28 illustration of his willingness to take advantage of desperate men
who were risking their lives to line defendant's pockets, defendant
deliberately crafted his mercenary contracts to be governed by the
(footnote cont'd on next page)

1 2. Conspiracy to Transfer Anti-Aircraft Missiles

2 In addition to defendant's conspiracy to use anti-aircraft
3 missiles, the evidence at trial included numerous written
4 communications reflecting defendant's conspiracy to buy, sell, and
5 transfer many hundreds of anti-aircraft missiles, including highly
6 sophisticated vehicle-borne systems capable of tracking and
7 destroying an airplane hundreds of miles away; smaller and less
8 costly mobile systems with a shorter range; agile man-portable
9 systems that were easily transferred, inexpensive, and simple to use;
10 and stationary missile systems capable of launching multiple
11 warheads.

12 Defendant's extensive communications advertised his willingness
13 and ability to buy, sell, and broker anti-aircraft missiles of all
14 kinds. These ranged from the small, shoulder-fired, man-portable
15 air-defense systems ("MANPADs", including Igla, Strela, and others)
16 favored by insurgents and terrorists because of their agility on the
17 battlefield, low cost, and the relative ease of obtaining them, to
18 the massive and highly sophisticated vehicle-borne Russian S-400 and
19 S-300 Triumph systems, which — as established through the trial
20 testimony of the government's missile expert, Dr. Doherty — can
21 track and destroy an airplane hundreds of miles away and sells for
22 billions of dollars. Exhibit 5400 contained the following photograph
23 of an S-400 anti-aircraft missile system:

24
25
26
27 _____
28 laws of Serbia — a country with no nexus to defendant, the work, or
the mercenaries — for the stated reason that Serbian law made it
illegal to work as a mercenary, and thus no aggrieved mercenary would
ever be able to challenge defendant's contract in court. See e.g.
Exhibits 723, 728.



Exhibit 5400 at 1.

The following photograph of an S-300 anti-aircraft missile system was also admitted as part of Exhibit 5400:



Exhibit 5400 at 4.

1 Examples of the abundant evidence showing defendant's
 2 involvement in brokering these various anti-aircraft missile systems
 3 include the following:

- 4 • Exhibits 302-303: In 2013, defendant engaged in a Skype
 5 discussion with a Russian supplier. Defendant advised that
 6 his client, "The government of Saudi Arabia," was seeking
 7 to purchase an "S-400 Triumf." Defendant told his supplier
 8 that if the supplier could obtain approval from the Russian
 9 authorities for Saudi Arabia's purchase of this tightly
 10 controlled multibillion-dollar anti-aircraft missile
 11 system, "I can arrange from Saudi to complete the deal."
 Defendant further noted that, "the Saudi King had already
 approved" the deal. After his supplier relayed the terms
 of the proposed deal, defendant replied that he had
 discussed those terms with "my Saudi partners HRH [his
 royal highness] prince Saud."¹⁷
- 12 • Exhibit 300: On September 6, 2013, via Skype message,
 13 defendant conveyed to another arms broker, "Just for your
 14 information Prince Saud receive a green line from King to
 purchase the S 400 this is billions of dollars."¹⁸
- 15 • Exhibit 305: On September 9, 2013, defendant conveyed to
 16 his business partner via Skype that he was pursuing a deal
 17 to supply arms, including Igla MANPADs, "in a covert way"
 18 to a client in the United Arab Emirates who would provide
 the arms to Arab rebel groups in Libya, Syria, and the
 Kurdish region of Iraq. Defendant explained that the
 client did not have an end-user certificate and did not
 want to obtain necessary approvals for the arms.
- 20 • Exhibit 307-308: On September 9, 2013, defendant conveyed
 21 the same information from Exhibit 305 to another potential
 22 supplier seeking the same list of armaments, including Igla
 MANPADs, for sale to his client in the UAE.
- 23 • Exhibit 309: On September 29, 2013, defendant sent the same
 24 list from Exhibits 305, 307, and 308 to another potential

25 ¹⁷ At trial, the government's anti-aircraft missile expert
 26 testified that in 2013, the Saudi government was seeking to acquire
 an S-400 Triumph anti-aircraft missile system from the Russian
 government. CR 424 at 50:16-53:8, 54:6-55:12.

27 ¹⁸ At trial, the government's anti-aircraft missile expert
 28 testified that the price of an S-400 Triumph anti-aircraft missile
 system ranged from hundreds of millions to billions of dollars. CR
 424 at 55:21-56:6.

1 supplier of the arms defendant sought to purchase,
2 including Igla MANPADs.

- 3 • Exhibits 312-314: Email discussions between defendant and
4 another co-conspirator regarding a list of weapons that
5 defendant sought to sell to a customer in Erbil, Iraq,
6 including "30 + 300" Igla 9K38 surface-to-air missiles.
- 7 • Exhibits 315-316: On July 3, 2014, defendant offered to
8 sell 95 Igla surface-to-air missiles to a customer in Iraq
9 at \$88,300 each.
- 10 • Exhibit 318: On July 30, 2014, defendant offered to sell to
11 the Ministry of Defence in Saudi Arabia 400 Strela surface-
12 to-air missiles at \$75,830 each and 95 Igla surface-to-air
13 missiles at \$77,375 each.
- 14 • Exhibit 319: On August 30, 2014, defendant sent to a co-
15 conspirator "a list of items [for] which we will have an
16 order very soon from KSA [the government of the Kingdom of
17 Saudi Arabia]," which included 95 Igla MANPADs, 8 Strela
18 MANPAD missile launchers and 400 Strela MANPAD missiles.
- 19 • Exhibit 324: On November 11, 2014, defendant asked an
20 Israeli supplier whether he could provide "any air defense
21 unit carried on shoulder."
- 22 • Exhibit 326: On November 13, 2014, defendant provided the
23 same Israeli supplier a draft fraudulent end-user
24 certificate and asked that the supplier "see if you can add
25 any air Defence systems to the EUC."
- 26 • Exhibit 328: On December 8, 2014, defendant sent his
27 business partner an email with a list of "Follow up" items
28 that began with "Air [defense] system" and "Air Defence
maintenance team."
- Exhibit 329: On December 23, 2014, defendant emailed with a
co-conspirator about the transfer of 25 Osa surface-to-air
missiles and one Pechora surface-to-air missile system to
defendant's customer in Libya. Exhibit 5400 included the
following photographs of Osa and Pechora missile systems:

OSA (9K33) SAM System



Exhibit 5400 at 15.

S-125 Pechora Missile System



Exhibit 5400 at 16.

- Exhibit 333: On January 5, 2015, defendant received an email from a supplier located in Israel stating that they would soon provide defendant with requested "answers for the air defense systems."
- Exhibits 334-344: These exhibits include defendant's January 5-11, 2015 communications with Shikhashvili and other co-conspirators involving defendant's creation of a fraudulent end-user certificate that reflects defendant's role as the supplier of 50 Igla 9M313 surface-to-air missiles to a militant faction in Libya, and an ultimate payment by defendant relating to weapons listed on that end-user certificate.
- Exhibit 339: On January 7, 2015, amidst defendant's correspondence with Shikhashvili and others regarding the creation of a fraudulent end-user certificate so that Igla anti-air missile systems, among other weapons, could be sold to defendant's client in Libya, defendant emailed to Shikhashvili on January 7, 2015, attaching the below photograph of an Igla shoulder-fired anti-aircraft missile system in the field. See also CR 424 at 62:21-64:10.



Exhibit 339.

- Exhibit 304: On May 19, 2015, defendant received an email from a co-conspirator advising defendant on efforts to supply the government of Saudi Arabia with an S-300 or S-400 anti-aircraft system.

- Exhibit 346: This communication from defendant to a co-conspirator discussed the prospective sale of a variety of weapons and munitions including 500 Igla 9M342 surface-to-air missile systems, 1500 ground power units for Igla systems, and 20 launcher mechanisms for Igla systems.
- Exhibit 349: This communication from defendant to a co-conspirator identified a large volume of weapons and ammunition intended for use in an end-user certificate "for our agreed country," including "6 Anti-air Defence System with Missile".

I. Defendant's Other Relevant Conduct

1. Defendant's Pursuit of Black-Market Uranium¹⁹

During the same time period, defendant was also involved in the trade of black-market uranium, a critical component in the development of nuclear weapons and dirty bombs. In a text exchange beginning on June 4, 2015, defendant engaged in the following conversation:

Jayjay: Will you be interested in uranat in Niger . . . I mean uranium.

Defendant: Yes but the French are controlling it in Niger and I have somebody from China.

Jayjay: This from black market. It will be suplied outside Niger. The people are here in Benin. It is very serious. Think about The people doing are also from Niger. They are very powerfull

Defendant: I don't understand are you selling the uranium or are you offering the mining opportunity

Jayjay: It is selling business in the black not officially. But the minister of mines is involved, top secret.

¹⁹ While the previously assigned judge declined to place any weight on this evidence in 2019 (CR 457 at 33:22-34:1), it now falls to this Court to consider all of the relevant evidence and determine how to weigh it. See United States v. Ponce, 51 F.3d 820, 826 (9th Cir. 1995) (district court not bound by prior sentencing findings); United States v. Matthews, 278 F.3d 880, 885-86 (9th Cir. 2002).

Defendant: How much per M/Ton²⁰

Jayjay: I do not know yet since I did not know whether you might be interested. Now that you make me know, i will find out and come back to you.

Defendant: Soon while i am in China

Jayjay: OK sir

[ten days later]

Defendant: Any news about uranium?

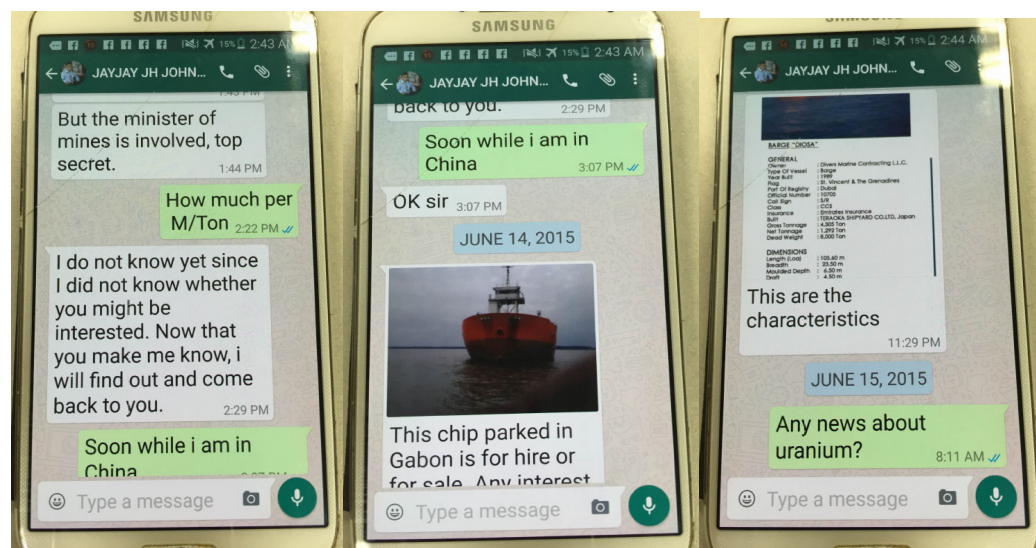
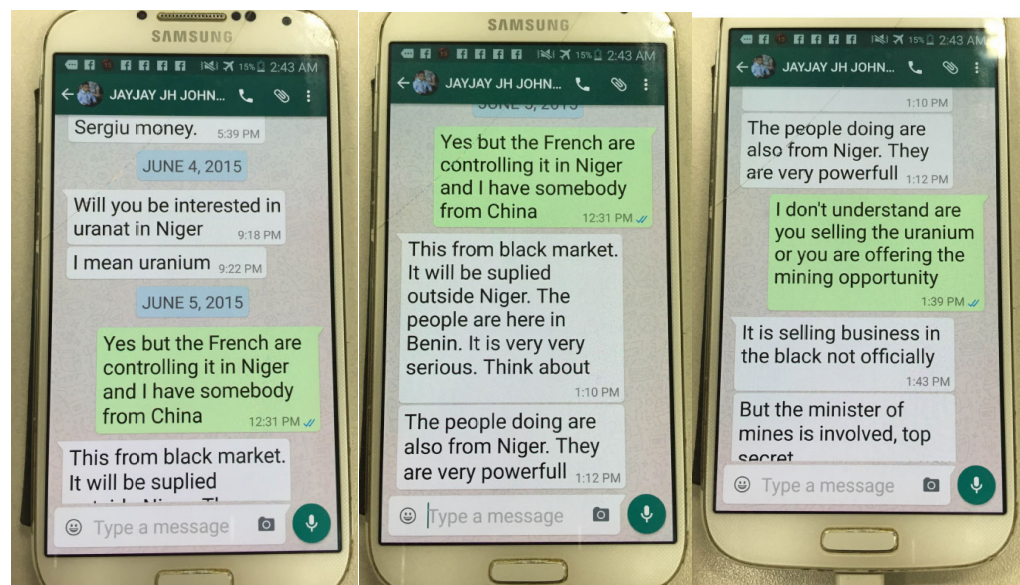


Exhibit 1106.

²⁰ A metric tonne (or metric ton) is a unit commonly used to measure a quantity of uranium.

1 This evidence establishes several disturbing facts. It shows
2 that defendant had a fairly firm grasp on the market for uranium,
3 that he knew immediately who was controlling it in the source country
4 it was being offered from, and that he knew the proper units of
5 measure and pricing structure. Most troubling, it shows that
6 defendant had multiple suppliers for illegal uranium, including one
7 in China **with whom he was already working** and with whom he apparently
8 intended to discuss this opportunity. It also demonstrates that
9 defendant was sufficiently interested in this opportunity to obtain
10 uranium in a "top secret," "black market" deal involving a corrupt
11 government minister in Niger to follow up with a further inquiry.²¹
12 Id.

13 Defendant's pursuit of black-market uranium is deeply
14 aggravating. **According to a Harvard-based nuclear nonproliferation**
15 **expert: "There's no plausible reason for looking for black-market**
16 **uranium other than for nuclear weapons — or profit, by selling to**
17 **people who are looking to make nuclear weapons."**
18 [https://www.usatoday.com/story/news/world/2012/12/10/georgia-nuke-](https://www.usatoday.com/story/news/world/2012/12/10/georgia-nuke-investigations/1757963/)
19 [investigations/1757963/](https://www.usatoday.com/story/news/world/2012/12/10/georgia-nuke-investigations/1757963/). Exhibit 1108. This related conduct
20 exemplifies defendant's own professed lack of regard for the
21 potentially catastrophic consequences of his illegal weapons-
22 proliferation activities, and his acknowledged interest in profit at
23 the expense of human life and safety. It is a particularly strong
24 aggravating factor in this case.

25
26
27 ²¹ Defendant's known interest in the black-market trade of
28 uranium dates back to 2012, when he sent a message to a co-
conspirator reporting that "900 g of Uranium the free army of Syria
trying to move it in exchange for arms." Exhibit 1107.

(A) Defendant's Counterfeit Currency Operations

Possibly to fuel his illegal weapons-trafficking business, or perhaps as another means to obtain easy illicit profits, the evidence suggests that defendant engaged in lucrative counterfeit currency operations during the time of the charged conduct. In the spring of 2014, defendant gave one of his business partners (Sergiu Banari, referenced in the First Superseding Indictment ("FSI") as Unidentified Co-Conspirator #3) his detailed, seasoned advice on the mechanics of counterfeiting:

Banari: I have a Buyer that is interested to buy USD and old Deutsch Marks that are still on the full sheets of paper, not cut. . . . This full sheets of USD had been delivered to Iran, Irak long time ago and still not used. But, my opinion is, if you ask the right powerful people in these countries, they will tell you a lot more about where to find them.

Defendant: your friend is looking for the papers which he can change it to Euro & Dollars

Banari: Uncut sheets of USD, nominal can be \$20, \$50, \$100

Defendant: It's a white [paper] money note each one is the same size of the 500 Euro other ones same size of the 100 Euro also we have the one for the 100 USD, if you look at it through the light you will be able to see the serial number like a shadow . . . you add chemicals to it and you use original money to copy the exact shape each 1 (500 Euro makes 2 more of the white one)

Exhibit 1109 at 20-24.

Multiple photographs obtained from court-authorized searches of defendant's digital devices depict bulk quantities of \$100 bills, €200 notes, and €500 notes. Exhibits 1110-1114.

2. Defendant's Pursuit of a Counterfeit Passport

For several months in 2015, during the offense conduct and shortly before his arrest, defendant acquired a sophisticated counterfeit Ukrainian travel document using a false name, false date of birth, false marriage, and false parentage in order to conceal and facilitate his illegal conduct and obscure his true identity. Defendant also explored the possibility of obtaining, for \$20,000, a biometrically enabled passport. This evidence includes documents reflecting the following:

- Exhibit 1115: On July 2, 2015, defendant and his business partner Sergiu Banari (Unidentified Co-Conspirator #3) engaged in a text exchange in which Banari provided the following verbatim price list for defendant's fraudulent document:
 - Only international - 12,000\$
 - Only international biometric 13500\$
 - Full complete your name: international + local = - 15000\$
 - Full complete new name. = 20000\$
- Exhibit 1116: Shortly thereafter, Banari reported to defendant the "best news in the world" that defendant "will have your new P..." by the end of August, and advised defendant to "choose your name, or if you want I can do it."
- Exhibit 1117: On July 3, 2015, Banari advised defendant by email that defendant's fictitious identity would include the false name "Roman Tarasovici Boico," a made-up mother's name "Hristina Nicolaevna Kostiu," and a made-up father's name "Taras Vasilievic Boico." Defendant jokingly replied that he would "have to go back to school to remember those names."
- Exhibit 1118: On July 4, 2015, Banari told defendant that his Ukrainian contacts recommended that defendant choose a fictitious Arabic name, and manufacture a fictitious Ukrainian marriage, to account for defendant's inability to speak the native language. Defendant replied with a

1 "thumbs up" emoji and told Banari that defendant sent the
2 names to him.

- 3 • Exhibit 1119: That day, defendant sent Banari an email with
4 the subject header "Name." The text indicated the name
5 defendant had chosen for his fraudulent travel document as
6 "Rony Youssef Karam." It further indicated false names for
7 defendant's mother and father and a false date of birth.
- 8 • Exhibits 1120-21: On September 10, 2015, Banari texted
9 defendant asking him to send a "very simple signature
10 according to the name we choose: Rony Youssef Karam."
11 Defendant replied with photographs of several different
12 handwritten signatures reflecting his fictitious name. The
13 same day, defendant also sent Banari an email entitled
14 "Hello from Roney" with an attachment of one of his
15 signatures using the false name.
- 16 • Exhibit 1122: On October 25, 2015, Banari sent defendant an
17 email forwarding defendant's fraudulent certificate of
18 marriage and fraudulent certificate to receive internal
19 passport.
- 20 • Exhibit 1123: On October 27, 2015, Banari sent defendant a
21 scanned copy of defendant's new false Ukrainian travel
22 document bearing defendant's photograph and the fictitious
23 name and date of birth that defendant selected.

24 Defendant's willingness to go to substantial lengths to obtain
25 fraudulent travel documents to help facilitate and conceal his
26 criminal activity further aggravates that criminality.

27 3. Defendant's Involvement in Other Illegal Activity

28 Defendant's fortune-seeking also led him to pursue deals
involving other illegal commodities, including looted antiquities,
which draw can massive profits on the black market. Defendant's
digital devices contained multiple photographs of apparent
antiquities, including a photo of defendant holding an artifact next
to a dated newspaper — a common practice for establishing proof of
possession on a particular date. Exhibit 1124. Antiquities looting

1 is frequently concentrated in areas of armed conflict, and the black-
2 market traffic in cultural artifacts is often closely linked to
3 financing those conflicts and arming combatants. See, e.g., Fabiani,
4 Michelle D., "Disentangling Strategic and Opportunistic Looting: The
5 Relationship between Antiquities Looting and Armed Conflict in
6 Egypt," MDPI, June 14, 2018, [https://www.mdpi.com/2076-](https://www.mdpi.com/2076-0752/7/2/22/pdf)
7 [0752/7/2/22/pdf](https://www.mdpi.com/2076-0752/7/2/22/pdf) (Exhibit 1125); see also Pineda, Sam, "Tackling
8 Illicit Trafficking of Antiquities and its Ties to Terrorist
9 Financing," Dipnote, U.S. Department of State Official Blog, June 20,
10 2018, [https://blogs.state.gov/stories/2018/06/20/en/tackling-illicit-](https://blogs.state.gov/stories/2018/06/20/en/tackling-illicit-trafficking-antiquities-and-its-ties-terrorist-financing)
11 [trafficking-antiquities-and-its-ties-terrorist-financing](https://blogs.state.gov/stories/2018/06/20/en/tackling-illicit-trafficking-antiquities-and-its-ties-terrorist-financing) (Exhibit
12 1126).

13 Evidence from defendant's digital devices and email account also
14 demonstrates his involvement in the black-market trafficking of
15 diamonds and his use of diamonds to mask and fund illegal arms
16 transactions. This evidence includes a September 29, 2015 email to
17 defendant from a South Africa entity known as AA Diamonds attaching a
18 quote for sniper rifles, pistols, silencers, and ammunition. Exhibit
19 863. The following day, on September 30, 2015, defendant received
20 another email from AA Diamonds with specifications for four MI-24V
21 helicopter gunships, fully armed with GSH-23L aircraft guns, machine
22 guns, submachine guns, pistols with silencers, and other armaments.
23 Exhibit 864. On October 9, 2015, defendant forwarded to his business
24 partner an invoice from AA Diamonds purportedly reflecting the
25 purchase of a 4.7-carat polished diamond for \$200,000, and a November
26 5 email to defendant from his business partner contains a SWIFT
27 record of the transfer of \$20,000 from their company to AA Diamonds
28 as a down payment on that invoice. Exhibits 865-66. On October 10,

2015, in a call with the undercover agent, defendant confirmed that he was involved in laundering diamonds from South Africa for arms, saying that "I can change diamonds to dollars." Exhibit 1127. Defendant's involvement in these illegal activities is further corroborated by a photograph stored on defendant's digital devices depicting a very large, uncut diamond. Exhibits 1128-1130. Like looted antiquities, black-market diamonds are another lucrative commodity closely linked to the fueling and financing of armed conflicts and the illegal proliferation of weapons and munitions. See, e.g., "The Role of Diamonds in Fuelling Conflict," United Nations General Assembly A/71/L.55, January 27, 2017, https://digitallibrary.un.org/record/858195/files/A_71_L-55-EN.pdf. Exhibit 1131.

4. Defendant's False Statements to USPO

Even in the wake of his strategic eleventh-hour guilty pleas and his conviction at trial, defendant sought to minimize his illegal arms-trafficking activities. Notwithstanding the reams of evidence of defendant's deep involvement in the illegal brokering and trafficking of weapons over the course of many years, many of which were in defendant's own verbal and written words, defendant reported to the USPO that "he has never seen or touched any military equipment, including an AK-47," and claimed that his access to weapons was so curtailed that he was limited to learning about them through online research. CR 390 at ¶ 90. Defendant's statements are contradicted by voluminous evidence at trial and sentencing, which included defendant's detailed discussions and negotiations relating to hundreds of weapons systems and other military articles and services. His statements to the USPO are also visually belied by the

1 following photographs, obtained from defendant's digital devices, in
2 which defendant is pictured standing directly in front of a display
3 of numerous assault rifles, holding a large-caliber ammunition round,
4 and pretending to smoke it like a cigar:



19 Exhibits 1132-33.

20 **IV. GOVERNMENT'S SENTENCING POSITION AND RECOMMENDATION**

21 **A. Sentencing Guidelines Calculations**

22 **1. The Applicable Guidelines**

23 The applicable guidelines section for Counts 1 (Arms Export
24 Control Act) and 2 (Smuggling) of the Indictment and Counts 1
25 (Conspiracy) and 2 (Arms Export Control Act) of the First Superseding
26 Indictment is USSG 2M5.2. The applicable guidelines section for
27 Counts 3 and 4 (Money Laundering) of the Indictment is USSG 2S1.1.
28

1 Base Offense Level: 26 [USSG §§ 2M5.2(a)(1)]

2 Conviction under 18 U.S.C. +2 [USSG § 2S1.1(b)(2)]
 3 § 1956

4 Total Offense Level: 28

5 **B. Response to Defendant's Objections to PSR²²**

6 1. The PSR Correctly Declined to Apply a Reduction For
 7 Acceptance of Responsibility

8 Defendant's objection to USPO's declination to apply a two-level
 9 reduction for acceptance of responsibility under USSG 3E1.1(a) is
 10 misplaced. A defendant is not entitled to an adjustment for
 11 acceptance of responsibility merely because he pleads guilty. See
 12 USSG § 3E1.1, Application Note 3. For strategic reasons, defendant
 13 elected to plead guilty on the literal eve of trial to only six of
 14 the seven counts charged. All seven counts were closely intertwined
 15 and grouped for sentencing purposes. Defendant proceeded to trial on
 16 the remaining count, which carried a lengthy mandatory minimum
 17 sentence. Defendant's eleventh-hour plea decision can best be
 18 understood as a "clever bargain," rather than genuine acceptance of
 19 responsibility. United States v. Rosales, 917 F.2d 1220, 1223 (9th
 20 Cir. 1990) (overruled on other grounds by United States v. Nordby,
 21 225 F.3d 1053 (9th Cir. 2000)). Defendant's aforementioned
 22 untruthful statements to the USPO falsely denying having ever laid
 23 eyes on any military equipment further illustrates his lack of actual
 24 acceptance of responsibility. CR 390 at ¶ 90.

25 After years of protracted litigation seeking to eviscerate the
 26 government's case on all seven counts, defendant suddenly pleaded

27 ²² In his objections to the PSR, defendant inaccurately
 28 characterized the nature of the Ninth Circuit's decision, which
 vacated, not reversed, defendant's conviction on the missile count.
See CR 490 at 1, 2.

1 guilty the afternoon before trial on six counts and then proceeded to
2 a lengthy trial on the missile count. At trial, he extensively
3 cross-examined government witnesses, vigorously argued against his
4 guilt, litigated a motion for directed acquittal arguing that no
5 reasonable jury could have found him guilty on the evidence, and
6 litigated a motion for a new trial on multiple grounds.

7 After he was convicted, he continued to contest and minimize his
8 guilt at sentencing. See CR 413 at 4 ("Yet, the evidence at trial
9 showed Ghanem never sold, purchased, imported or exported any
10 surface-to-air missiles nor did he enter into any agreements to do
11 so, despite numerous efforts by an undercover agent to engage him in
12 such activities. At most, Ghanem solicited many persons for the
13 purchase of surface-to-air missiles which were never consummated");
14 see also id. at 4 (alleging that some of the missiles that
15 defendant's mercenaries were hired to use were inoperable); id. at 4-
16 5 (arguing that one of defendant's mercenaries was not fully trained
17 and qualified to operate the missiles, and that the other mercenary's
18 eyesight was poor); id. at 6-7 (alleging that defendant's efforts to
19 broker missiles "never came to fruition").

20 The application note to the sentencing guidelines section on
21 adjustments for acceptance of responsibility provides that the Court
22 should consider defendant's actions in "truthfully admitting or not
23 falsely denying any additional relevant conduct for which the
24 defendant is responsible under § 1B1.3 (Relevant Conduct)." USSG
25 § 3E1.1, Application Note 1(A). And the Ninth Circuit has held that
26 a defendant who "falsely denies, or frivolously contests, relevant
27 conduct that the court determines to be true has acted in a manner
28 inconsistent with acceptance of responsibility." United States v.

1 Green, 940 F.3d 1038, 1042-43 (9th Cir. 2019); see also United States
2 v. Ginn, 87 F.3d 367, 370 (9th Cir. 1996) ("a defendant is not
3 entitled to an adjustment when he does not accept responsibility for
4 all of the counts of which he is convicted"; United States v.
5 Garrido, 596 F.3d 613, 619 (9th Cir. 2010) (a defendant must accept
6 responsibility for all grouped offenses in order to receive an
7 acceptance adjustment for those offenses).

8 Defendant has never accepted responsibility for his conspiracy
9 to use and to transfer anti-aircraft missiles. After being convicted
10 at trial, defendant claimed at sentencing that he hadn't actually
11 committed any real crimes (CR 457 at 46:14-47:4), accused the
12 undercover agent of trying to induce him to broker surface-to-air
13 missiles (CR 413 at 4), complained that the mercenaries whose
14 services he brokered for were unqualified and physically unable to
15 fire anti-aircraft missiles (id. at 4-7), and suggested that he was
16 just a bumbling salesman who wasted years engaging in protracted
17 negotiations on countless deals that never came to fruition (id. at
18 7).

19 Notwithstanding defendant's strategic pleas of guilty to six of
20 the counts against him, the government does not perceive that
21 defendant has expressed genuine contrition and accepted
22 responsibility for any, let alone all, of his relevant criminal
23 conduct. Nonetheless, the government recognizes that the sentencing
24 judge is in the best position to determine whether defendant has
25 expressed genuine contrition at the time of sentencing and defers to
26 the Court on the applicability of 3E1.1(a).

2. The PSR Appropriately Applied the Guidelines, and USPO's Recommended Upward Departure Is Justified

a. *The USPO Correctly Recommended a Substantial Upward Departure in Accordance With the Sentencing Guidelines*

Defendant's argument that the PSR "misapplie[d]" the sentencing guidelines is misplaced. Defendant does not appear to object to the applied guidelines themselves, but rather takes issue with USPO's position in the accompanying disclosed recommendation letter that a significant upward departure is warranted by the extraordinarily aggravating facts of this case. As a starting point, the sentencing guidelines are of course advisory only. United States v. Booker, 543 U.S. 220 (2005). This Court has discretion to impose any appropriate sentence up to the 95-year statutory maximum for defendant's six offenses of conviction.²³

Moreover, defendant's reading of the application notes to the guidelines (which are themselves explanatory and not prescriptive) is selective. Defendant acknowledges that the offense conduct's effect on "a security or foreign policy interest of the United States, the volume of commerce involved, the extent of planning or sophistication, and whether there were multiple occurrences" are appropriate factors to consider, but he argues that this is only so within the bounds of the applicable guideline range — here, 78-97

²³ See 18 U.S.C. § 3584(b) ("The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider, as to each offense for which a term of imprisonment is being imposed, the factors set forth in section 3553(a)"); see also United States v. Wills, 881 F.2d 823, 826 (9th Cir. 1989) ("We hold that a judge has discretion to impose a concurrent or consecutive sentence, as a matter of law If the guidelines are to be consistent with Title 18, the discretion cannot be taken away.").

1 months.²⁴ Def. Obj. to PSR, at 4; USSG § 2M5.2, application note 2.
2 But defendant overlooks the next sentence in the same application
3 note, which states, "Where such factors are present in an extreme
4 form, a departure from the guidelines may be warranted." Id. The
5 presence in "extreme form" of each of these factors in this case
6 cannot be overstated, and USPO's recommendation of a 20-year sentence
7 was neither impermissible nor inappropriately high.

8 Defendant points to United States v. Pedrioli, 978 F.2d 457 (9th
9 Cir. 1992) in warning the Court not to apply a sentence above the
10 applicable guidelines range. As an initial matter, that case was
11 decided in the pre-Booker days, when judges were shackled by the
12 then-mandatory sentencing guidelines and lacked the freedom to impose
13 sentences that were appropriately tailored to the facts of a
14 particular case. Substantively, Pedrioli also offers defendant no
15 support, as its facts are profoundly different. In Pedrioli, the
16 court considered whether 800 handguns constituted an "extreme" number
17 of weapons, such that an upward departure from the mandatory
18 guidelines range was permissible. Here, by contrast, the evidence
19 showed that defendant brokered many millions of rounds of ammunition,
20 along with virtually innumerable quantities and varieties of
21 missiles, rockets, mortars, machine guns, sniper rifles, assault
22 rifles, fighter jets, tanks, assault helicopters, and other heavy
23 weapons. The court in Pedrioli further relied on common sense in
24 holding that when evaluating whether the volume of illicit weapons
25 trafficked warranted a departure, the type of weapon mattered. 978

27
28 ²⁴ As noted herein, defendant argues that he is entitled to a
two-point reduction pursuant to USSG § 3E1.1; thus, in his view, the
applicable guideline range should be 63-78 months.

1 F.2d at 460 ("What constitutes an 'extreme' number under § 2M5.2 will
2 vary with the type of weapon involved. Three Tomahawk missiles are
3 different from three armored vehicles, which in turn are different
4 from three handguns."). Again, the munitions involved in this case
5 are worlds apart, both in quantity and destructive quality, from the
6 800 low-caliber handguns at issue in Pedrioli.

7 Defendant likewise relies on Pedrioli for the conclusion that
8 the intended use of his weapons for advanced warfare is irrelevant
9 and inappropriate for consideration, but Pedrioli says no such thing.
10 Def. Obj. to PSR, at 4. Rather, the court in Pedrioli reviewed and
11 rejected the district court's finding that the 800 handguns at issue
12 were intended to wage war, noting that the PSR indicated an entirely
13 contrary purpose — namely, that the handguns were smuggled to be
14 given as gifts or favors for the ultimate purpose of being used in
15 gun clubs pursuant to local custom in the Philippines. 978 F.2d at
16 460. The court further observed, "we are not persuaded that
17 combatants 'wage war' primarily with small caliber handguns." Id.
18 By marked contrast, *waging war is the only possible use* for the
19 missiles, rockets, mortars, tanks, machine guns, and other assault
20 weaponry that defendant made his living buying and selling.

21 Defendant also cites to United States v. Tsai, a Third Circuit
22 case that was similarly decided before Booker rendered the guidelines
23 advisory. 954 F.2d 155 (3rd Cir. 1991). Defendant erroneously
24 characterizes the defendant in that case as a "sophisticated and
25 repeat arms trafficker[] who dealt in weapons of war," and states
26 that "the defendant in Tsai dealt with missile systems and was
27 attempting to obtain thousands of them." Def. Obj. to PSR at 5.
28 This is a stretch, as the defendant in Tsai was charged with dealing

1 in components that could be used (though not necessarily exclusively)
2 for missile systems. Tsai, 954 F.2d at 159-160 (explaining that
3 defendant introduced evidence that at least one of the components had
4 non-military uses). After finding that “[n]o evidence suggest[ed]
5 that the volume and scope of exports involved in this case were
6 extremely large,” the Third Circuit found that the 5,000 optical
7 receivers sought by the Tsai defendant did not constitute an
8 “extreme” volume of commerce. Id. at 165. That finding is of no
9 moment for defendant here, who unquestionably trafficked in an
10 extreme volume of fully assembled heavy armaments.

11 A more apt case than Pedrioli with his 800 handguns or Tsai with
12 his optical domes is United States v. Johnson, 952 F.2d 565, 584 (1st
13 Cir. 1991. There, the defendants were convicted of violating AECA by
14 exporting bomb-making materials and of conspiracy to destroy British
15 military helicopters in Northern Ireland. Id. at 570-71. In
16 Johnson, as here, USSG § 2M5.2 applied, but the district court found
17 the prescribed guidelines range to be inadequate on the facts of the
18 case and departed upward. Id. at 582-83.

19 The district court in Johnson carefully detailed the reasons for
20 its departure decision, which included the “cool, deliberative,
21 calculated” quality of the defendants’ discussion of the weaponry
22 involved and “the utter lack of any expression of remorse or
23 contrition” in those conversations; the “potential for death to
24 innocent people” caused by the defendants’ activities; the “extreme
25 amount of planning and sophistication in the arms export conspiracy”;
26 the multiple occurrences of illegal conduct; the threat that the
27 defendants’ conduct posed to an American security interest, namely,
28

peaceful resolution of a foreign conflict in a strategic region.²⁵
Id. at 583. The First Circuit found each of these factors to be an
 appropriate basis for a departure.²⁶ Id.

Like defendant here, the defendants in Johnson objected to the
 district court's consideration of "the threat to national security
 and the potential for death and destruction" presented by their
 conduct as aggravating factors, reasoning that the existence of a
 threat to national security and the potential for death and
 destruction were presumptions already accounted for in § 2M5.2, the
 guidelines section applicable to their offenses. Id. at 584. The
 First Circuit roundly rejected that position:

We find no merit to these arguments. Their logic would
 require that an internationally trained terrorist bent on
 murdering scores of innocent civilians be sentenced no more
 severely than an unlicensed arms dealer; and that one who
 would provide arms to a body of insurgents be sentenced no
 more harshly than one who would supply them with drug
 paraphernalia. The guidelines plainly preclude such
 results. Section 5K2.0 permits an upward departure where
 factors — a threat to national security or terroristic
 purpose, for example — are present "to a degree

²⁵ The sentencing court in Johnson also characterized the
 defendants' conduct as "terrorism." 952 F.2d at 583. As further
 noted herein, in a discussion about his arms-trafficking network,
 defendant described his ties to the leadership of Hezbollah, a
 designated foreign terrorist organization. Moreover, defendant made
 clear to the UCA that he did not particularly care in whose hands his
 weapons ended up, so long as he got paid.

²⁶ The Johnson court found that USSG §§ 5K2.0, 5K2.8, and 5K2.14
 all operated to justify the upward departure, and it discussed those
 sections at some length. Section 5K2.0 generally provides that the
 sentencing court may impose a sentence outside the range recommended
 by the guidelines if it finds aggravating or mitigating circumstances
 "of a kind or to a degree not adequately taken into consideration by
 the Sentencing Commission in formulating the guidelines." Section
 5K2.8 authorizes a departure for "unusually . . . cruel" or otherwise
 "extreme conduct." Section 5K2.14 provides that "[i]f national
 security, public health, or safety was significantly endangered, the
 court may depart upward to reflect the nature and circumstances of
 the offense." While the import of these general guidelines
 considerations may be lessened after Booker, §§ 5K2.0 and 5K2.14 in
 particular underscore the propriety of a substantial upward departure
 on the facts of this case.

1 substantially in excess of that which ordinarily is
2 involved in the offense of conviction," or in any
3 configuration "'not adequately taken into consideration'"
4 by the Sentencing Commission.

5 Id. at 584 (internal citations omitted). Far more so than even in
6 Johnson, defendant's extreme and extensive conduct, which presented a
7 significant threat to national security and massive potential for
8 death and destruction, certainly warrant an upward departure.

9 Defendant argues that among the 119 defendants sentenced under
10 § 2M5.2 in 2020, none involved an upward departure, and thus that the
11 PSR's recommendation in this case is an "outlier." Def. Opp. to PSR,
12 at 6. As a purely factual matter, defendant's case is most certainly
13 an outlier among the type of garden-variety AECA cases typically
14 sentenced pursuant to § 2M5.2, the vast majority of which do not
15 involve trafficking in immense quantities of rockets, anti-tank
16 missiles, anti-aircraft missiles, mortars, tanks, fighter aircraft,
17 machine guns, automatic rifles, and many millions of rounds of
18 ammunition to feed those weapons.

19 *b. The USPO's Recommended Upward Departure Is Fully*
20 *Consistent With the Constitution*

21 Defendant cites to a dissent from the Supreme Court's denial of
22 certiorari in Jones v. United States, 135 S.Ct. 8 (2014) in support
23 of his complaint that the upward departure recommended by the USPO is
24 "unconstitutional, or at least constitutionally doubtful," because
25 the Court should not be permitted to consider his anti-aircraft
26 missile trafficking conduct in light of the Ninth Circuit's vacatur
27 of his conviction on venue jury instruction grounds. Defendant is
28 wrong, as the law is clear that the Court can and should consider his
relevant conduct in imposing a sentence. See 18 U.S.C. § 3661 ("No
limitation shall be placed on the information concerning the

1 background, character, and conduct of a person convicted of an
2 offense which a court of the United States may receive and consider
3 for the purpose of imposing an appropriate sentence."); see also
4 United States v. Watts, 519 U.S. 148, 151-152 (1997) (a sentencing
5 court may consider *even conduct of which a defendant has been*
6 *acquitted*) (emphasis added).

7 The dissenting opinion in Jones does not support defendant's
8 position. In Jones, the jury convicted the defendants of
9 distributing small quantities of crack cocaine, but it acquitted them
10 of a larger drug conspiracy. Id. At sentencing, based on evidence
11 that included recordings of the defendants engaging in sales of crack
12 cocaine and testimony from several other members of the conspiracy,
13 the judge found that defendants had in fact engaged in the conspiracy
14 and, in reliance on that judicial finding, sentenced the defendants
15 based on the larger drug quantities involved in the conspiracy. Id.
16 The convictions were upheld, and upon the Supreme Court's denial of
17 the defendants' petition for certiorari, the dissent posited that the
18 Apprendi rule should have been extended to hold that any fact
19 necessary to prevent a sentence from being substantively unreasonable
20 is an element that must be found by a jury, not a judge.

21 Even if the dissenting votes of three justices were to be
22 credited over the remainder of the Supreme Court and the contrary
23 D.C. Circuit opinion, which remains the law, the key fact found
24 compelling by the Jones dissenters is also inapposite: defendant here
25 was not *acquitted* of the conduct at issue. Quite the opposite — on
26 evidence that the trial judge later deemed "overwhelming," a jury
27
28

1 found defendant guilty beyond a reasonable doubt of that conduct.²⁷
 2 This Court can and should consider that conduct in determining the
 3 appropriate sentence.

4 The USPO's recommendation for a very substantial upward
 5 departure is entirely warranted. Indeed, it can be faulted only for
 6 not going far enough.

7 *c. Defendant Is Not Entitled To Sentencing Leniency*
 8 *On the Basis of Alleged Lack of Evidence of*
 9 *Completion of His Arms Transactions*

10 Defendant repeats his prior claims, unsupported by any evidence,
 11 that he merely engaged in "preliminary talk or discussion regarding a
 12 wide range of deals," and that "almost all of that discussion never
 13 materialized." Def. Obj. to PSR, at 5; see also Def. 2019 Sentencing
 14 Memorandum (CR 413) at 11-12 ("for over five years, Ghanem solicited
 15 others for the sale of surface-to-air missiles without being able to
 16 consummate one deal during this time"; "Ghanem has proven to be a
 17 poor negotiator and facilitator of these types of deals").

18 As described herein, defendant signed and executed a formal
 19 contract to broker a quarter *billion* dollars in arms and ammunition,
 20 along with other high-volume contracts and agreements. He and his
 21 companies are named on end-user certificates and official offers as
 22 the supplier of massive quantities of munitions. His marketing
 23 materials repeatedly offered to provide his substantial customer base
 24 with a limitless array of weapons, ammunition, and mercenary
 25 services, many of which he boasted that he had in his current stock.

26 ²⁷ A more instructive case would be United States v. Grissom, 525
 27 F.3d 691 (9th Cir. 2008). There, the Ninth Circuit held that the
 28 sentencing court was required to take into account, as relevant
 conduct, not only the quantity of drugs in the count of conviction,
 but also the quantity of drugs involved in two counts that were
 dismissed. Id. at 697.

1 His email communications reflect a nearly constant flow of
2 communications with fellow black-market arms brokers over the years,
3 negotiating quantities and models and calibers and prices, and
4 arranging for the logistics of transport and concealment of the
5 illegal loads.

6 Moreover, defendant's claim of incompetence and lack of follow-
7 through is not credible. In the high-stakes world of black-market
8 arms trafficking, had defendant perpetually failed to deliver on his
9 many offers and promises, his suppliers and customers and fellow
10 brokers would have (at best) ceased to do business with him. They
11 did not; the evidence illuminates that defendant conducted many deals
12 through the years with the same parties. The record in this case
13 belies his claim that he was an ineffectual bumbler who never quite
14 managed to close any of his innumerable deals.²⁸

15 Because defendant routinely relied on overseas banks for his
16 arms business (other than the undercover transaction, wherein he used
17 a U.S. bank as directed by the undercover agent), and because he
18 relied on false invoices to shield his activities, financial records
19 reflecting the consummation of many of his transactions is lacking.
20 Neither that fact nor any other evidence in the record supports his
21 unsubstantiated suggestion that he never consummated a deal. Rather,
22 the above-described evidence admitted at trial and sentencing shows
23 that defendant was, as he advertised himself to be, perfectly able
24 and willing to finance and secure a buyer for the undercover arms
25 transaction (described as a small test order) to which he admitted in
26

27
28 ²⁸ Even in a world where that were true, defendant would not be
entitled to sentencing credit for lack of competence in his criminal
aims.

1 his pleas to Counts 1 through 4 of the original indictment, just as
2 he showed the shrewdness and competence of an experienced arms dealer
3 in purchasing for \$398,000 and then reselling at a massive profit the
4 services of mercenary missile operators and various other defense
5 articles and services in early 2015.

6 d. *The USPO Correctly Considered Defendant's*
7 *Extraterritorial Violation of U.S. Laws As*
8 *Relevant Conduct*

9 Defendant's cursory suggestion that his conduct should be
10 overlooked because it was largely committed overseas is incorrect,
11 and his reliance on United States v. Chao Fan Xu is particularly
12 inapt. 706 F.3d 965, 993 (9th Cir. 2013), *abrogated on other grounds*
13 by RJR Nabisco, Inc. v. European Community, 136 S. Ct. 2090 (2016)
14 In Chao Fan Xu, the Ninth Circuit held that a defendant's violation
15 of foreign criminal laws would present undue analytical and
16 comparative-law complexities at sentencing and thus should not be
17 considered as relevant conduct. *Id.* Here, defendant unquestionably
18 violated U.S. criminal laws that expressed prohibited his overseas
19 conduct, so Chao Fan Xu offers him no support. Likewise, defendant
20 relies on another irrelevant case wherein the Eighth Circuit found
21 that USSG § 5K2.14 — which provided for an upward departure where
22 "national security, public health, or safety was significantly
23 endangered" — was inapplicable in an anthrax hoax case where the
24 threat was entirely empty and there was no law enforcement response
25 that endangered safety. United States v. Cole, 357 F.3d 780, 784
26 (8th Cir. 2004). Cole is entirely irrelevant. Defendant's conduct
27 in trafficking massive quantities of heavy weapons to militias,
28 governments, and individuals worldwide is very different than a known

1 empty hoax, and it unquestionably endangered national security,
2 public health, and safety.

3 **C. The Court Should Impose a Sentence Including a Prison Term**
4 **of 30 Years Based on the Factors in 18 U.S.C. § 3553(a)**

5 1. Nature, Circumstances, and Severity of the Offenses

6 As described herein and as further detailed in the trial and
7 sentencing evidence, defendant's prolific arms trade included bulk
8 quantities of anti-tank missiles, rockets, mortars, grenades, and the
9 launchers therefor; machine guns of various sizes; sniper rifles,
10 assault rifles, pistols, and other small arms; night-vision equipment
11 and other sensitive military technology; attack aircraft; tanks,
12 radar systems; mercenary fighters; and countless other heavy weapons,
13 along with many millions of rounds of ammunition to feed them. The
14 sheer scope and volume of these brokering activities adds credence to
15 defendant's professed willingness and readiness to sell anything,
16 anywhere, to anyone.

17 This is not a regulatory offense. Defendant did not merely
18 neglect to register as an arms broker or as a missile salesman. U.S.
19 law regulates the brokering and transfer of weapons by U.S. citizens,
20 even overseas, because those transfers can threaten U.S. and allied
21 forces abroad, upset the balance of strategic alliances, and
22 otherwise compromise U.S. national interests. Moreover, U.S. law
23 implements the nation's international treaties and commitments,
24 including, as is specifically applicable in this case, the nation's
25 commitment to enforce a United Nation's arms embargo on Libya during
26 the bloodiest days of that country's ongoing civil war. It is not
27 the prerogative of a private citizen to decide which governments and
28 militant factions around the world to arm with missiles and tanks and

1 machine guns and fighter jets. And as defendant himself
2 acknowledged, he did not control (or care) where his illegal weapons
3 ended up or against whom they were used.

4 Defendant's conduct is further aggravated by the inclusion of
5 anti-aircraft missile systems (and the services of specialists to use
6 them) in his extensive arms portfolio. Missile systems designed to
7 destroy aircraft are governed by a separate statute with a 25-year
8 mandatory minimum sentence because they are extremely dangerous and
9 devastatingly effective. Some, like the shoulder-fired versions that
10 defendant both brokered and conspired to use, are highly portable,
11 easily smuggled across borders, relatively inexpensive, easily
12 pilfered, simple to fire, effective at a range of altitudes, and
13 readily transferrable among militant groups who may use them against
14 both military and civilian targets to further their political or
15 ideological goals.

16 As the legislative history of 18 U.S.C. § 2332g shows, Congress
17 expressly recognized in enacting this statute that anti-aircraft
18 missiles are a serious threat to commercial aviation, and that they
19 carry the potential to easily kill vast numbers of people. See,
20 e.g., 150 Cong. Rec. S11939-01, 150 Cong. Rec. 150 Cong. Rec. S11939-
21 01, 150 Cong. Rec. S11939-01, S11997, 2004 WL 2812449 ("MANPADS are
22 portable, lightweight, surface-to-air missile systems designed to
23 take down aircraft. Typically they are able to be carried and fired
24 by a single individual. They are small and thus relatively easy to
25 conceal and smuggle. A single attack could kill hundreds of persons
26 in the air and many more on the ground."); id. at S11998-99 ("A 2000
27 State Department report stated that 'one of the leading causes of
28 loss of life in commercial aviation worldwide has been from MANPADS

1 . . . attacks, with over 30 aircraft lost.’ According to a
2 Congressional Research Service report issued last year, there have
3 been at least 36 known missile attacks on commercial planes in the
4 last 25 years; 35 of those incidents took place in war-torn areas,
5 mainly in Africa”).

6 At trial, the Court and the jury heard the testimony of Dr.
7 Robert Doherty, the government’s expert on anti-aircraft missile
8 systems.²⁹ Dr. Doherty explained that one key difference between
9 anti-aircraft missile systems and many other projectile-based weapons
10 is the guided nature of the systems, which enable them to find and
11 track the airborne target and follow it as it moves through the air.
12 CR 424 at 21:3-22:11. He further testified that, in particular, the
13 shoulder-fired anti-aircraft missile systems that defendant conspired
14 to use and transfer are very straightforward and easy to competently
15 use with little or no training, a feature that further enhances their
16 danger to human life, civilian targets, U.S. national security, and
17 foreign policy interests. Id. at 33-39; 99:7-100:19.

18 At sentencing in 2019, the Court heard additional testimony from
19 Dr. Doherty on the unique dangers presented by anti-aircraft missile
20 systems. Dr. Doherty explained that shoulder-fired anti-aircraft
21 missiles, or MANPADs, like those that defendant hired mercenaries to
22 use against aircraft in Libya, had been used “three to four dozen
23 times against civilian aircraft, typically in areas of conflict.” CR
24 457 at 17:8-15. Dr. Doherty provided illustrative examples of past
25 uses of surface-to-air missiles against civilian aircraft, including
26

27
28 ²⁹ Dr. Doherty’s relevant experience included 30 years’ work at
the Defense Intelligence Agency’s Missile and Space Intelligence
Center, where he specialized in man-portable air defense systems.

1 the 2014 downing of Malaysia Air flight 17 over Ukraine, which
 2 resulted in the deaths of all 283 passengers and 15 crew aboard; a
 3 2006 attack on a U.S. military transport carrying a U.S.
 4 Congressional delegation out of Iraq, which was thwarted by the
 5 military airplane's air defense countermeasures; the 1994 downing of
 6 a plane carrying the presidents of Burundi and Rwanda, wherein
 7 everyone aboard was killed (a politically motivated attack that
 8 spawned the Rwanda genocide); and a thwarted attack against an
 9 aircraft carrying the Prime Minister of Israel. Id. at 19:13-21:12.³⁰

10 Dr. Doherty testified about the factors that render these
 11 weapons systems uniquely dangerous, including that, as guided
 12 weapons, they are "designed to hone in on an aircraft's heat
 13 signature." Id. at 17:16-19. He noted that this feature makes
 14 MANPADs particularly dangerous to civilian aircraft, which have
 15 scheduled departure and arrival times, follow prescribed routes at
 16 known altitude and speeds, are not maneuverable, and have no self-
 17 protection systems. Id. at 17:19-24. Dr. Doherty testified that an
 18 attacker armed with a MANPAD would not need to be physically present
 19 on or near the premises of an airport, but rather could be stationed
 20 "several tens of miles away." Id. at 18:20-25. He noted that the
 21

22
 23 ³⁰ Further details on many past incidents in which commercial
 24 airliners were targeted, often successfully, by anti-aircraft
 25 missiles are available on open-source media See, e.g.,
 26 https://www.washingtonpost.com/posteverything/wp/2014/07/18/missiles-are-now-so-advanced-that-its-amazing-more-planes-havent-been-shot-down/?utm_term=.e14a9b1e3b88 (Exhibit 1100);
 27 <https://nypost.com/2014/07/23/missiles-threaten-civilian-planes-all-over-the-world/> (Exhibit 1101);
 28 <https://www.nytimes.com/2018/05/24/world/europe/russia-malaysia-airlines-ukraine-missile.html>; <http://time.com/3002171/malaysia-airlines-ukraine-crash-airliners-shot-down/> (Exhibit 1102);
https://en.wikipedia.org/wiki/List_of_airliner_shootdown_incidents
 (Exhibit 1103).

1 danger is particularly prevalent on an aircraft's approach to the
2 airport, when both altitude and speed are decreasing. Id. at 19:1-4.

3 The nature, circumstances, and severity of defendant's offense
4 conduct overwhelmingly militate in favor of a lengthy prison term.

5 2. History and Characteristics of the Defendant

6 a. *Defendant's Motive of Greed and Wanton Disregard*
7 *for Human Life*

8 Unlike some missile-trafficking defendants charged in other
9 cases who were motivated by ideology, defendant is a true mercenary.
10 As is abundantly clear from the global breadth of his vast market,
11 and as he stated in his own words, his motive for trafficking in
12 massive quantities of devastating weapons and ammunition across the
13 globe was simple greed. In his sentencing findings, Judge Otero
14 described defendant as "a profiteer," a characteristic that the Court
15 found highly aggravating. CR 457 at 29:6-19.

16 In recorded conversations with the undercover agent, defendant
17 displayed a chilling indifference to the heavy human cost of the
18 arms-trafficking business that lined his pockets. The night before
19 his arrest, defendant explained that he engaged in willful blindness
20 about where the deadly weapons from which he profited were used, and
21 against whom. Exhibit 1104 at 50-52. Defendant noted that he did
22 not want to knowingly be a part of killing civilians — or at least
23 "Arab refugees" — but with the notable caveat that if he sold
24 weapons to Saudi Arabia and Saudi Arabia then transshipped his
25 weapons for use in armed conflicts in Yemen and Syria resulting in
26 heavy civilian casualties, "that's their business." Id. As
27 defendant neatly summarized it, "That's my rules on Saudi Arabia."
28 Id. Defendant chose to operate by those "rules" when turning a

1 willfully blind eye to the ultimate destination of the countless
2 machine guns and mortars and automatic rifles that he brokered and
3 sold across the globe. That defendant equally applied these amoral
4 "rules" to weapons as dangerous to civilian targets and as coveted by
5 terrorist groups as man-portable anti-aircraft missile systems is
6 additional aggravating evidence justifying a strong sentence.

7 In considering defendant's characteristics, his words on the
8 morning of his arrest bear repeating:

9 DEFENDANT: I wake up every day in the morning. First two
10 things I do at the same time, coffee, the
11 cigarette is ready. I go to the TV and press
12 on the news. I go on news. If there is peace
I go [to sleep], if there is war I wake up.
I'm happy. There is more business for me.

13 UCA: Yeah.

14 DEFENDANT: It doesn't matter where is the business, where
15 is the war. Even if it's in Haiti, I will fly
there.

16 UCA: You are the original lord of war.

17 DEFENDANT: I love war because it's business, you know.

18 UCA: Yes.

19 DEFENDANT: And don't tell me I am the creator of war.
20 God's the creator of war. God makes war
happen.

21 UCA: You just make sure people don't run out of
supplies.

22 DEFENDANT: I am the mailman. I am the mailman only.

23 Exhibit 1105.

24 At the conclusion of this case, in considering the factors
25 relevant to an appropriate sentence, Judge Otero opined that
26 defendant's self-described willful blindness concerning the use of
27 his weapons to kill civilians and his self-professed love of war
28

1 because it lined his pockets "summarize best the character of Mr.
2 Ghanem." CR 457 at 28:20-29:19.

3 *b. Other Characteristics*

4 The record reflects that defendant has some health problems that
5 can be summarized as challenging but relatively common ailments. See
6 PSR at ¶¶ 73-74; see also CR 457 at 61:19-24. The Court previously
7 considered defendant's "significant health issues" in imposing a 30-
8 year sentence, recommending that he be placed in a facility that
9 could best address those health conditions during that lengthy term.
10 Id. The government is not aware of any new health conditions that
11 warrant additional consideration by the Court, and none are
12 specifically described in the PSR. Thus, it does not appear that
13 defendant suffers from any condition that would mitigate an otherwise
14 appropriate sentence in this case. See United States v. Carter, 560
15 F.3d 1107, 1121-22 (9th Cir. 2009) (finding 471-month sentence for
16 two bank robberies substantively reasonable where the defendant's
17 life challenges were not "so atypical as to put him outside the
18 minerun of roughly similar cases considered by the Sentencing
19 Commission in formulating the guidelines, nor are they so special as
20 to render his overall sentence unreasonable") (internal citations
21 omitted)).

22 3. Avoidance of Sentencing Disparities

23 In every one of the handful of cases involving trafficking and
24 use of anti-aircraft missiles of which the government is aware, the
25 defendant has received a sentence of at least 25 years. See United
26 States v. Hammadi, 737 F.3d 1043, 1046 (6th Cir. 2013) (life
27 imprisonment on 2332g count); United States v. Bout, 731 F.3d 233,
28 236-37 (2d Cir. 2013) (25 years on 2332g count); United States v.

1 Cromitie, 727 F.3d 194, 204 (2d Cir. 2013) (25 years for each of four
 2 defendants (Cromitie, D. Williams, O. Williams, and Payen)); United
 3 States v. Al-Kassar, 660 F.3d 108, 117 (2d Cir. 2011) (30 years for
 4 one defendant (Al-Kassar); 25 years each for two other defendants
 5 (Al-Ghazi and Moreno-Godoy)); United States v. Garavito-Garcia, 2015
 6 WL 13708830, *2 (S.D.N.Y. 2015) (25 years); United States v. Pouryan,
 7 628 Fed.Appx. 18, 20 (2d Cir. 2015) (unreported decision) (25 years
 8 for each of two defendants (Pouryan and Orbach)); United States v.
 9 Chen, 526 Fed.Appx. 772, 775 (9th Cir. 2013) (unreported decision)
 10 (25 years); United States v. Olangian, 803 Fed. App'x. 536 (2nd Cir.
 11 2020) (unreported decision) (25 years). Even absent the 25-year
 12 mandatory minimum now required under 18 U.S.C. § 2332g, at least one
 13 court has upheld a sentence much longer than 25 years for conspiring
 14 to traffic anti-aircraft missiles before that statute was enacted.
 15 See United States v. Lakhani, 480 F.3d 171, 185 (3rd Cir. 2007)
 16 (affirming 47-year sentence for 71-year old defendant who had a 19-
 17 year history of productive assistance to U.S. law enforcement).³¹

18 The sheer volume of anti-aircraft missiles that defendant sought
 19 to transfer to militants operating in the shadows of unstable parts
 20 of the world alone sets defendant apart from otherwise similarly
 21 situated defendants. (Compare, e.g., Exhibit 318, in which defendant
 22 offered 400 Strela anti-aircraft missiles and 95 Igla anti-aircraft
 23 missiles from his existing stock to various entities in multiple
 24 countries; Exhibit 312, in which defendant conspired to transfer "30
 25

26
 27 ³¹ It is notable that Judge Otero determined that the interests
 28 of justice in this case required a sentence well above the 25-year
 mandatory minimum, making clear that the mandatory minimum applicable
 to the 2332g statute was not the driving factor behind his sentencing
 decision for the conduct now before the Court.

1 + 300" Igla surface-to-air missiles to Erbil, Iraq; and Exhibits 334-
2 343, in which defendant conspired to transfer 50 Igla surface-to-air
3 missiles to the Libya Dawn militant faction; with Hammadi, wherein
4 the defendant was convicted of attempting to transfer two shoulder-
5 fired surface-to-air missiles and sentenced to life imprisonment.)

6 Moreover, unlike in the other anti-aircraft missile trafficking
7 cases of which the prosecution team is aware, the evidence suggests
8 that at least one of defendant's deals resulted in the actual
9 transference of anti-aircraft missiles to an end user. Exhibits 334-
10 342 detailed the creation of a Libya Dawn end-user certificate for
11 munitions including 50 Igla surface-to-air missiles. Exhibits 343
12 and 344 indicated that defendant's co-conspirator, David Shikhashvili
13 (who was defendant's partner in procuring the services of the anti-
14 aircraft missile mercenaries discussed herein, and who also continued
15 to do business with defendant after this deal), sent defendant an
16 invoice related to this end-user certificate.

17 The broad spectrum of the types of missiles in which defendant
18 dealt is further aggravating, and further separates him from the
19 heartland of anti-aircraft missile cases, most of which involved only
20 MANPADs. As established at trial, the highly sophisticated Russian
21 vehicle-borne S-400 system, which can hunt down and destroy an
22 airplane hundreds of miles away and may sell for billions of dollars,
23 is tightly controlled by the Russian government and monitored by U.S.
24 authorities because of the immense impact it can have on the course
25 of a conflict. The protracted efforts by defendant, a private U.S.
26 citizen, to broker the sale of this highly consequential system to a
27 government in the Middle East without regard to the impact on U.S.
28 national interests, alliances, diplomacy, and foreign policy renders

1 his conduct even more serious than reflected by the 25-year mandatory
2 minimum sentence applicable to § 2332g convictions. Moreover,
3 defendant did not stop at merely proliferating these serious weapons;
4 the evidence at trial showed that he conspired to use them to
5 actively interfere in a foreign war. Defendant's conspiracy to both
6 transfer and use anti-aircraft missiles further distinguishes him
7 from other defendants.

8 The interest in avoidance of sentencing disparities weighs
9 strongly in favor of a sentence of more than 25 years in this case,
10 where defendant's conduct is more aggravated than that of many others
11 who received 25-year sentences.

12 4. Other 3553(a) Factors

13 As described in 18 U.S.C. § 3553(a)(2), this case requires a
14 sentence that reflects the gravity of defendant's conduct, promotes
15 respect for the law, provides appropriate punishment for the
16 particular offense, provides adequate general and specific deterrence
17 of criminal conduct, and protects the public. The appropriate
18 sentence to account for these and the other sentencing factors
19 includes a term of imprisonment of 30 years.

20 **V. CONCLUSION**

21 The government requests an extraordinary departure from the
22 guidelines because this is an extraordinary case. Defendant
23 trafficked in extraordinary quantities of heavy weapons of war for
24 years. His callous indifference to human suffering and death,
25 including the suffering and death of innocent civilians, is
26 extraordinary.

27 Moreover, anti-aircraft missiles are extraordinary weapons.
28 This is exemplified by the fact that a base offense level of 26 is

1 appropriate for the vast heartland of cases involving other weapons,
2 including military equipment, and that Congress *still* saw fit to
3 impose a 25-year mandatory minimum for proliferation of this
4 particular category of uniquely destructive weaponry. These unique
5 weapons systems have the power to reshape governments, influence
6 wars, alter borders, and change history. Defendant, as a private
7 U.S. citizen who sought to profit from their transfer and use,
8 prioritized his personal enrichment over the interests of his
9 country. His conduct was extraordinarily aggravating.

10 Immediately before imposing a sentence in 2019 for the conduct
11 now before this Court, Judge Otero made the following remarks:

12 Before I will sentence the defendant, I will just comment
13 that the — as the Government has summarized, Ms. Mills has
14 summarized, the breadth and scope and gravity of the
defendant's arms dealing is really breathtaking and in many
ways frightening.

15 CR 457 at 57:11-15. Judge Otero then imposed a sentence of 30 years,
16 which he went on to explain as follows:

17 In sentencing the defendant, the Court was moved by the
18 gravity and enormity of the defendant's conduct in the arms
— international arms black market business. The
19 defendant's conduct was aggravated by the sheer number of
20 weapons in which the defendant trafficked over a number of
years including very serious anti-aircraft missiles,
21 antitank missiles, rockets, mortars, machine guns, sniper
rifles, other munitions of various types.

22 Id. at 61:11-18.

23 The sentence imposed in this case must fairly account for
24 defendant's brokering of vast quantities of almost limitless types of
25 heavy weapons of war and ammunition over the years, the breadth and
26 gravity of his determined efforts to use and to transfer anti-
27 aircraft missiles, and his acknowledged disregard for human life in
28 pursuit of personal wealth. His conduct remains exactly the same as

1 it was when the Court found that the sentencing factors necessitated
2 a 30-year term of imprisonment. The appropriate sentence for that
3 conduct also remains exactly the same. The government respectfully
4 requests that the Court impose a sentence that includes a prison term
5 of 30 years.